

DATE: May 4, 1998

MEMORANDUM TO: Dennis F. Geer
Chief Operating Officer and
Deputy to the Chairman

Jo-Ann Henry
Director, Office of Diversity and Economic Opportunity

FROM: Stephen M. Beard
Director, Office of Congressional Relations and Evaluations

SUBJECT: *The Office of Diversity and Economic Opportunity's Discrimination
Complaint Resolution Process and Caseload (EVAL-98-001)*

This report presents the results of our review of the discrimination complaint process and caseload managed by the Federal Deposit Insurance Corporation's (FDIC) Office of Diversity and Economic Opportunity (ODEO). We conducted this review at the request of the Chief Operating Officer and Deputy to the Chairman. The purpose of our review was to evaluate the ODEO informal and formal discrimination complaint program to identify inefficiencies and recommend measures to improve the process. The second goal of our review was to determine the status of cases in ODEO's formal complaint caseload and assess ODEO's efforts to reduce its caseload.

Overall, ODEO has made some improvements to the discrimination complaint program, especially in the informal counseling stage and in the information systems management area. During our review, ODEO also took actions to organize and better secure case records. However, we noted in our draft report that more improvements could be made. Specifically, ODEO needs to:

- Develop office-wide performance goals and performance expectations for individual staff.
- Prepare accept/dismiss determinations, complaint investigations, and final agency decisions more timely to comply with federal sector equal employment opportunity (EEO) regulations.
- Improve the quality of accept/dismiss decisions and contract investigations.
- Develop written procedures for administering, investigating, and reporting on informal cases and formal discrimination complaints.
- Ensure that its efforts to improve case information systems are fully and effectively implemented.

With respect to the status of ODEO's formal complaint caseload, ODEO's inventory contained numerous cases with elapsed day time frames in excess of federal sector EEO processing requirements. Further, ODEO's overall case processing statistics lagged behind most other federal agency EEO offices. ODEO's performance should be viewed in the context that about 20 percent of ODEO's formal cases remain from the Resolution Trust Corporation (RTC) Office of Equal Opportunity. These RTC cases have been difficult to resolve because of the complications associated with finding key witnesses and source documentation necessary to assess the cases' merits.

On April 21, 1998, ODEO provided the Corporation's response to a draft of this report. ODEO management agreed with 25 of the 27 recommendations. The response, planned actions, actions already taken, and reasons for ODEO management's disagreement with two of our recommendations provided the requisite elements of a management decision for each of the 27 recommendations. ODEO's written response is included in its entirety as Appendix II. Appendix III presents our assessment of management's responses to the recommendations and shows that we have a management decision for each of the 27 recommendations.

We appreciate the opportunity to assist management in its efforts to improve this program. Throughout our review, we discussed our findings and suggestions with appropriate management and staff, and management was receptive to the issues we raised.

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Introduction

This report presents the results of our review of the discrimination complaint process and caseload managed by the Federal Deposit Insurance Corporation's (FDIC) Office of Diversity and Economic Opportunity (ODEO). In August 1997, FDIC's Chief Operating Officer and Deputy to the Chairman (COO) asked our office to evaluate this program and determine the status of open discrimination cases. Accordingly, the objectives of our review were to:

- Identify inefficiencies and steps that add little or no value in the discrimination complaint resolution process, and suggest methods for streamlining that process,
- Suggest methods for monitoring the discrimination complaint resolution process, such as establishing baselines and goals, performance measurements, and case tracking systems,
- Determine the nature of ODEO's formal caseload, and
- Assess ODEO's efforts to reduce its formal caseload.

The scope of our review included open cases in the informal counseling stage and open complaints in the formal discrimination complaint stage. To accomplish our objectives we:

- Documented ODEO's organization structure, relevant policies and procedures, staffing and staff responsibilities.
- Reviewed applicable federal sector equal employment opportunity (EEO) law and Equal Employment Opportunity Commission (EEOC) guidance.
- Reviewed prior reports, evaluations, and consulting sessions of ODEO and ODEO staff. This included reviewing:
 - FDIC Office of Inspector General's (OIG) audit report *Equal Employment Complaints Adjudication Program*, dated December 22, 1994.
 - A report and process maps prepared by FDIC's Training and Consulting Services Branch (TCSB). We also interviewed TCSB staff and contract facilitators to understand the scope, findings, and observations from their reviews.
- Reviewed FDIC business planning documents to determine whether ODEO had developed office-wide performance goals and measures. We also interviewed ODEO managers and staff to determine whether ODEO had established performance expectations for individual staff.
- Interviewed ODEO management and staff in headquarters and the field to understand and document the EEO complaint process, identify problem areas and program successes, and obtain

suggestions for improvements. Interviews included selected managers, all Equal Opportunity (EO) Specialists in the Affirmative Employment and EEO Counseling Section, and all EEO Specialists in the Formal Complaint Processing Section, as well as selected support staff.

- Prepared process maps of FDIC's existing discrimination complaint resolution process to identify bottlenecks, steps that add little or no value, and opportunities for streamlining the process. We will provide copies of these process maps to ODEO management separately from this report.
- Interviewed representatives from the Corporate Affairs Section (CAS), Legal Division, to understand their involvement in the discrimination complaint resolution process and to identify measures for improving interaction and communication with ODEO. We also interviewed, and obtained documentation from, the CAS senior attorney responsible for processing informal cases and formal complaints which pose a conflict of interest for ODEO. The senior attorney also provided suggestions for improving ODEO's informal and formal processes.
- Analyzed the content of ODEO's current database system used to track cases; reviewed database information to identify the status of complaints, trends, and problem areas; and performed analytical work to assess the nature of cases--including the number, bases, and issues of complaints. We also stratified cases according to elapsed days and their status in the complaint process to identify trends and determine why older cases were not being resolved.

We were unable to fully accomplish our objective to determine the status of cases in ODEO's formal complaint inventory because of weaknesses in ODEO information systems. As discussed throughout this report, we identified numerous data fields in ODEO's case management database that were incomplete. There were also inconsistencies between data contained in the database and case explanations provided by ODEO employees. Further, the case files were unorganized and incomplete. Because ODEO uses the database to report formal complaint statistics to FDIC senior management and the EEOC, we considered the case database the most appropriate source for assessing the status of open formal complaints despite its data quality shortcomings.

We were unable to determine the status for 14 of the 29 cases in the Final Agency Decision (FAD) stage. We attempted to do so by checking the case database, interviewing EEO Specialists, and reviewing information in the file room. We notified the Associate Director, EEO and Diversity Branch, in November 1997 and again in December 1997 and February 1998 of our inability to fully accomplish this evaluation objective. Following issuance of our draft report, ODEO determined that a FAD had been issued for one case, and the remaining 13 cases were slated for priority FAD issuance.

- With respect to ODEO's procurement of a new case management system, we attended contractor presentations on two systems, and analyzed and briefed ODEO management on the shortcomings of the old case management system for consideration in selecting and implementing the new case management system.

- Reviewed information systems for informal counseling cases and for recording case correspondence.
- Inspected ODEO's file room of formal complaint cases.
- Interviewed representatives from ODEO and the Corporate Legal Issues Section (CLIS), Legal Division, to determine their efforts to establish an alternative dispute resolution (ADR) program. We also reviewed a 1997 U.S. General Accounting Office (GAO) report on the successes of ADR within federal and private sector organizations.
- Interviewed a representative from the EEOC and analyzed available EEOC reports on EEO complaint processing and appeal statistics for other federal agency EEO offices. We also reviewed EEOC-proposed changes to the federal sector EEO complaint process and discussed the status of these changes with the EEOC representative.
- Interviewed EEO representatives from the Department of the Air Force, the Department of Energy (DOE), the Department of the Treasury, the U.S. Customs Service, the Department of Labor (DOL), and the Tennessee Valley Authority (TVA) to obtain: comparative statistics, best practices information, performance measurements and benchmarks, insights about their program successes, and sample EEO documents and products. Appendix I is a summary of the best practices information we obtained from the six agencies.
- Interviewed management representatives from the Division of Administration, Division of Finance, Division of Compliance and Consumer Affairs, Division of Supervision, Division of Resolutions and Receiverships, and OIG to discuss their experiences with the process and obtain suggestions for improvements.

Because of time constraints, we did not interview representatives from the Acquisition Services Branch (ASB) or private investigation contractors who work with ODEO in conjunction with performing contract investigations of complaints. We did interview an ASB representative to discuss oversight manager responsibilities.

We conducted our review from September 3, 1997, through January 23, 1998, in accordance with the President's Council on Integrity and Efficiency's *Quality Standards for Inspections*.

Results in Brief

Overall, ODEO has made some improvements to the discrimination complaints program, especially in the informal counseling stage and in the information systems management area. During our review, ODEO also took actions to organize and better secure case records.

With regard to the status of ODEO's formal complaint caseload, ODEO's inventory contained numerous cases with elapsed day time frames in excess of federal sector EEO processing requirements. Further, ODEO's overall case processing statistics lagged behind most other federal agency EEO offices.

The following represents a synopsis of our review, our conclusions, and the issues we identified.

Overall Timeliness of the Complaints Process

ODEO was not processing discrimination complaints timely as required by federal sector EEO law. ODEO's average case processing time for fiscal year 1996 was 86 percent longer than the national federal sector average. Office-wide performance measurements and individual performance expectations should be developed to reduce the formal complaint caseload and improve the average processing time for formal complaints.

Information Systems Management

ODEO is implementing a new case tracking system and has improved the condition of, and established procedures for, its file room. However, additional improvements are needed. Because case files and databases were incomplete or unorganized, ODEO did not always know the status of some cases.

Informal Counseling

ODEO has made significant improvements to its informal counseling program. In March 1998, ODEO began requiring the completion of counselor reports during the informal counseling stage. However, additional procedures are needed to clarify the counselors' role in resolving disputes and in communicating with FDIC managers.

Early Resolution of Informal Complaints

ODEO's percentage of counseling contacts that result in formal complaints was higher than the average of other federal EEO offices and this percentage had increased over the past few years. The administrative complaint process is the only avenue presently available to the complainant for resolving

discrimination complaints. CLIS is developing an ADR program for processing certain discrimination complaints.

Accept/Dismiss Decision

During 1997, ODEO took an average of 110 days to notify complainants of which issues it decided to accept for formal processing or dismiss. Further, there is a perception that, in the past, ODEO accepted issues that should have been dismissed. ODEO could improve its performance in this area by revising existing procedures, establishing performance expectations, managing tasks more diligently, and screening issues more carefully.

Investigation Stage

ODEO was not always delivering ROIs to complainants within required time frames. Contractors were not always completing investigations timely, and ODEO was not always reviewing ROIs in time to require the contractor to correct report deficiencies. In our opinion, improved management, established performance expectations, and better contract administration are needed to address these timeliness issues.

Final Agency Decisions

The 23 cases we could review in the FAD stage had been in that status for an average of 620 days. As a result, complainants' concerns are not being promptly resolved and the confidence in the Corporation's discrimination complaint processing could be negatively affected. We recommended several measures to eliminate the backlog of old cases and to more consistently complete FADs within statutory time frames.

Hearings and Appeals

In the past, coordination and communication of information between ODEO and CAS could have been better. As a result, CAS did not always have sufficient time or the critical information necessary to adequately prepare for hearings or respond to appeals. According to CAS officials, communication has improved between ODEO and CAS over the past year. ODEO has also taken efforts to develop procedures for transmitting correspondence during the hearings and appeals stages. Additional measures can be put in place to foster communication and coordination between the two offices.

Background

It is FDIC's policy to provide equal employment opportunity for all employees, and applicants for employment, regardless of their race, color, age, religion, sex, national origin, or physical or mental disability. FDIC prohibits discrimination against employees, former employees, or applicants for employment, based upon these factors in accordance with the statutory provisions of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act, the Equal Pay Act of 1963, and Title 29 of the Code of Federal Regulations (CFR) Part 1614, titled *Federal Sector Equal Employment Opportunity*, effective October 1, 1992.

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on race, color, religion (including religious accommodation), sex (including sexual harassment), national origin, and reprisal for participating in a protected EEO activity or opposing unlawful discrimination. The Rehabilitation Act of 1973 prohibits employment discrimination on the basis of mental and physical disabilities (including reasonable accommodation). The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination on the basis of age (age 40 or older). The Equal Pay Act of 1963 (EPA) prohibits sex-based wage discrimination. Title 29 CFR Part 1614 are the governing regulations established by the EEOC for processing complaints of discrimination in the federal sector.

In accordance with the EEOC regulations, FDIC provides individuals who believe they have been discriminated against based on these prohibited bases, procedures for initiating and processing employment discrimination complaints at both the informal and formal stage of the administrative discrimination complaint process.

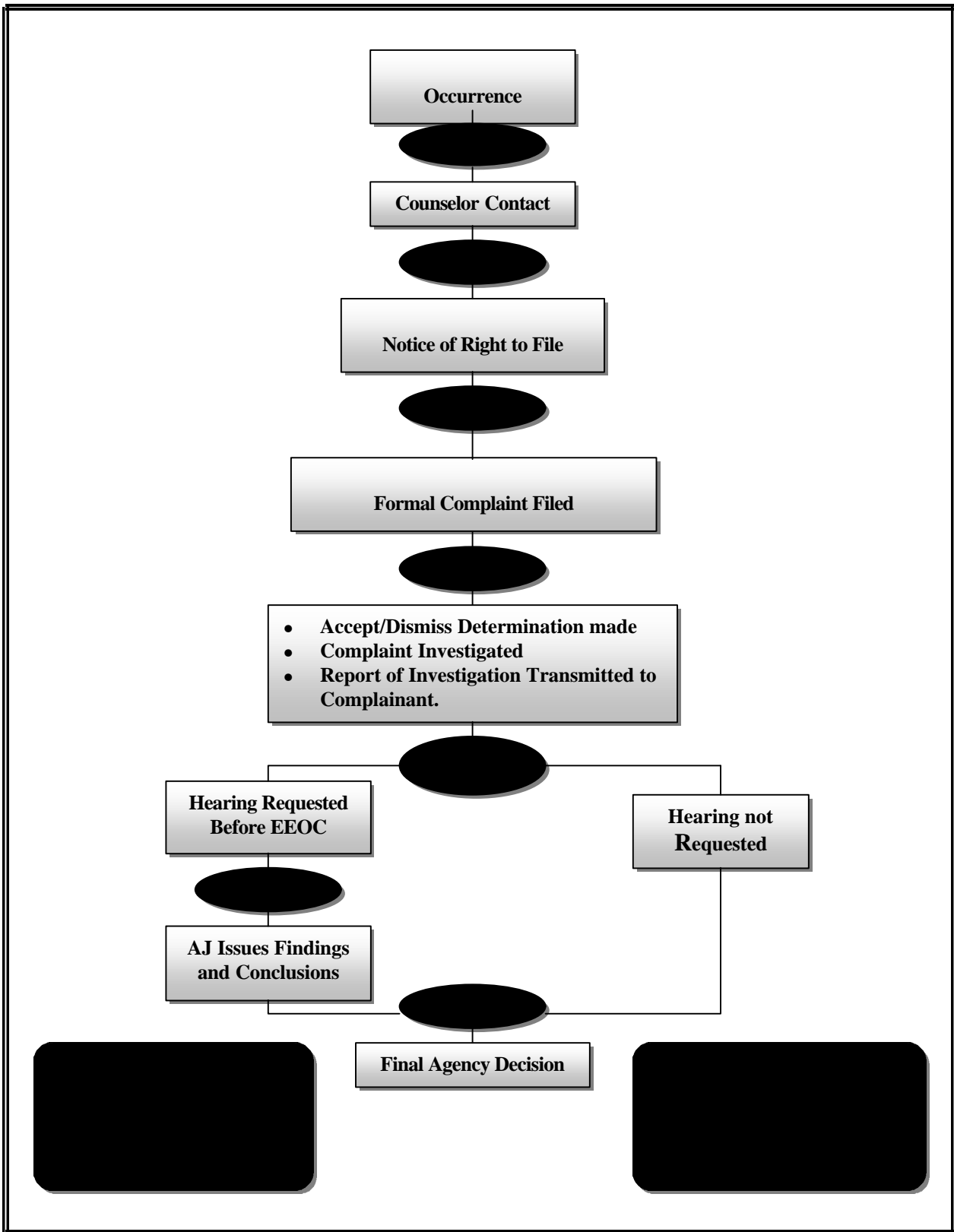
An employee or applicant for employment at the FDIC who believes he or she has been subjected to discrimination must contact an ODEO counselor within 45 calendar days of the date when the discriminatory matter occurred or the effective date of a personnel action. The counselor is a neutral party who attempts to resolve the matter informally within 30 calendar days of initial contact with the complainant. If the matter is not resolved during the 30-day counseling period, the complainant and FDIC can agree in writing to extend the counseling period for an additional 60 calendar days. Otherwise, the counselor must issue to the complainant a Notice of Right to File a Formal Discrimination Complaint (NRTF) by the 30th day of the counseling period. If the complainant decides to pursue the matter, he or she must file a formal complaint within 15 calendar days of the receipt of the NRTF. ODEO is required to review the complaint to ensure it meets the procedural requirements of the CFR, conduct a complete and fair investigation of the complaint, and deliver a report of investigation (ROI) to the complainant within 180 calendar days of the complaint filing date. However, the parties may agree in writing to extend this time period by not more than 90 calendar days. Following receipt of the ROI, the complainant has 30 calendar days to: (1) request a FAD from FDIC, or (2) request a hearing before an EEOC Administrative Judge (AJ).

Should the complainant request an FAD, or not respond to the ROI within 30 days, FDIC has 60 days to deliver a decision on the merits of bases and issues stated in the complaint. The complainant may accept this decision or appeal it to the EEOC.

The EEOC AJ issues findings of facts and conclusions of law within 180 calendar days of the hearing request. FDIC then has 60 calendar days to accept, reject, or modify the AJ's finding and conclusions, including relief ordered by the AJ, and to issue a final decision. If the FDIC does not issue a decision, the recommended action by the AJ becomes the FDIC's final decision. The complainant has 30 calendar days to appeal FDIC's final decision to the EEOC's Office of Federal Operations (OFO).

Alternatively, the complainant can file a civil action in U.S. District Court within 180 days of the date of complaint or within 90 days of the FDIC's decision or EEOC's decision on appeal. Throughout the entire processing of the discrimination complaint, the FDIC must attempt reasonable efforts to settle the complaint. Figure 1 on the following page provides an overview of the federal sector EEO complaint process.

Figure 1: Overview of Federal Sector Complaint Processing Under 29 CFR Part 1614



ODEO's EEO and Diversity Branch is responsible for administering FDIC's discrimination complaint program. The Affirmative Employment and EEO Counseling Section handles the informal counseling stage. This section has an EEO Counselor Program Coordinator and three EO Specialists in headquarters who participate part-time in the counseling program, eight full time EO Specialists in the field who currently perform only counseling, and 27 collateral duty counselors in headquarters and in the field.

The Formal Complaint Processing Section manages the formal discrimination complaint process. This section consists of a Complaint Manager and seven EEO Specialists. These specialists make accept/dismiss decisions, review ROIs, prepare FADs, and coordinate hearings and appeals with CAS.

As of November 7, 1997, ODEO had 205 open discrimination complaints in various stages of the discrimination complaint process.

Status	FDIC Cases	RTC Cases	Total
Accept/Dismiss	53	2	55
Investigation	41	3	44
Transmittal ROI	8	0	8
Request Final Agency Decision with/without Hearing	10	2	12
EEOC Hearing/Administrative Judge Decision	33	22	55
Final Agency Decision (FAD)	12	17	29
Other	2	0	2
Totals	159	46	205

Source: ODEO database of open cases.

CAS has also designated a Senior Attorney to process informal and formal discrimination cases that pose a conflict of interest problem for ODEO. As of November 4, 1997, the Senior Attorney had 34 informal and formal discrimination matters assigned in addition to the formal cases listed above.

Overall Timeliness of, and Management Attention to, the Complaint Process

ODEO was not processing discrimination complaints timely as required by federal sector EEO law. ODEO's average case processing time for fiscal year 1996 was 86 percent longer than the national federal sector average. An absence of office-wide performance measurements and individual performance expectations contributed to these delays. Consequently, ODEO did not always process cases in compliance with EEO requirements, cases were not always properly or efficiently managed, complainant issues were not always addressed timely, and ODEO staff were not always held accountable for their performance.

BACKGROUND

12 CFR Part 1614, Section 102 requires each agency to maintain a continuing program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. Specifically, the agency shall: "Provide for the prompt, fair and impartial processing of complaints in accordance with this part..." Further, the agency must designate a Director of EEO with responsibility for assuring that individual complaints are fairly and thoroughly investigated and that final decisions are issued in a timely manner in accordance with 12 CFR Part 1614.

The Government Performance Results Act (GPRA) of 1993 requires executive agencies to develop strategic plans which define agency missions, establish results-oriented goals, and identify strategies to achieve those goals. Establishing office-wide goals and individual performance expectations will assist FDIC's compliance with GPRA.

To comply with GPRA, FDIC prepares an annual Business Plan that includes annual workload analyses, budget and goals. The plan describes how an organizational component will achieve its objectives. The business plan must state the goals of the component, the objectives to be achieved in the budget period and their relationship to the goals, and the performance measures associated with each objective.

FDIC Circular 2430.1, *Performance Management Program*, dated October 1, 1995, sets forth the corporate policy and procedures on performance management and provides that supervisors (rating officials) establish fair and equitable performance expectations and goals for individuals that are tied to accomplishing the organization's mission and objectives.

ASSESSMENT OF PERFORMANCE

We identified processing delays at virtually every step of the formal complaint process, including the accept/dismiss, investigations, transmittal of investigation, and FAD stages. ODEO took an average of 707 days to process the 70 cases it closed during fiscal year 1996. According to the EEOC's *Federal Sector Report on EEO Complaints Processing and Appeals*, federal agencies took an average processing time of 379 days to close federal sector EEO complaints during fiscal year 1996. EEOC ranked FDIC 70th out of 79 reporting agencies with closing activity. For fiscal year 1997, FDIC reported an average processing time of 756 days to EEOC for its closures during the year. As of the date of this report, EEOC had not issued its 1997 federal sector report.

CONTRIBUTING FACTORS

ODEO has not established office-wide performance measures related to its discrimination complaint caseload. Further, FDIC's *Corporate Performance Plan and Performance Report*, dated October 14, 1997, did not mention ODEO performance goals related to reducing the discrimination complaints caseload. FDIC's *Corporate Operating Plan*, as of May 30, 1996, did include a project goal for substantially eliminating by December 1996 those discrimination complaints that exceeded the 180-day processing timeframe. However, a number of these cases remained in ODEO's inventory.

In addition, ODEO has not established specific performance expectations related to individual performance. While we noted various reasons for delays in processing complaints, we identified several recurring problems that contributed to the age of older cases. Specifically, ODEO managers did not always assign tasks timely, establish completion dates for tasks, adequately monitor task progress, or hold EO and EEO Specialists accountable for protracted delays. Further, once tasks were completed, managers did not always review draft products timely.

The Director, ODEO, specifically asked our office to research ideas for how ODEO could develop performance expectations for individual staff. Further, a number of ODEO managers and staff we interviewed stressed a need within ODEO for greater accountability and for holding ODEO managers and staff more responsible for performance. We discuss specific performance expectations in the individual sections of this report that address the various stages of the complaint process.

BEST PRACTICES AT OTHER AGENCIES

We interviewed a representative from the DOL's Office of Civil Rights to identify best practices for processing EEO complaints. As part of DOL's annual strategic plan, the Office of Civil Rights developed office-wide goals for the complaint processing function. Specifically, these goals include:

- A reduction in the instances of discrimination by 10 percent over the next 5 years (two percent incremental reductions per year),
- An increase in DOL's pre-complaint resolution rate by 2 percent of informal complaints for this year, and
- A decrease in the number of formal complaints by 2 percent of formal cases for this year.

DOL's Office of Civil Rights also established a goal of avoiding \$300,000 in complaint processing costs through the use of its ADR program. The office estimated its cost to process a formal complaint through the FAD stage and then used this estimate to calculate cost avoidance savings.

CONCLUSIONS AND RECOMMENDATIONS

ODEO must improve its overall compliance with EEO statutes. Absent prompt and effective corrective actions, both the employees' and management's confidence in the Corporation's EEO program could be negatively impacted.

As noted in FDIC's 1998 *Annual Performance Plan*, "The process of communicating corporate priorities and soliciting participation from all levels of staff has the effect of promoting accountability on the part of managers and staff for achieving these goals that they have helped to identify." We noted a general lack of such priority and goal setting for ODEO's discrimination complaint processing. Accordingly, we recommended that the Director, ODEO:

- (1) Develop office-wide performance measures geared to reducing the formal complaint backlog and improving the average processing time for formal complaints.

Suggested Strategies for Implementation

Performance measures should be expressed as tangible and measurable objectives against which actual achievement can be compared, and expressed as a quantitative standard, value, or rate. Examples of office-wide performance goals could include:

- Reducing ODEO's caseload by the end of calendar year 1998.
- Resolving all cases older than 180 days by the end of calendar year 1998.
- Increasing ODEO's pre-complaint resolution rate.
- Reducing ODEO's average case processing time.

As ODEO achieves these goals, the Director, ODEO, can revise these measures and implement more challenging standards. We suggested the Director, ODEO, use comparative complaint processing information from EEO offices at other federal agencies to establish baselines to use in measuring program success. EEOC's annual *Federal Sector Report on EEO Complaints Processing and Appeals* provides comparative

statistical information on more than 90 federal agency EEO offices and could be helpful in assessing office-wide performance.

Both managers and staff were responsible for the various delays that occurred throughout the formal complaint process. The EEO statutes themselves provide criteria for evaluating timeliness. Nevertheless, ODEO staff have not been held accountable for how timely they carry out their responsibilities or for the quality of their work.

ODEO must more effectively manage performance by ensuring that employees clearly understand performance expectations and how they contribute to the goals and objectives of the office. Doing so will encourage employee growth and development and foster employee commitment to achieving those goals and objectives. Further, performance planning will establish a process for ongoing performance monitoring and review. Accordingly, in subsequent sections of this report addressing accept/dismiss determinations, investigations, FAD preparation, and hearings and appeals, we included recommendations for developing performance expectations for individual managers and EEO Specialists based on time frames and quality of work.

Information Systems Management

EEOC guidance requires agencies to maintain reliable information to process complaints effectively and efficiently. ODEO is implementing a new case tracking system and has improved the condition of, and established procedures for, its file room. However, additional improvements are needed. Because case files and databases were incomplete or unorganized, ODEO did not always know the status of some cases. Further, ODEO risked misplacing key documents and missing important milestones and due dates required under federal sector EEO law.

BACKGROUND

29 CFR Part 1614 requires each agency EEO Director to assure that individual complaints are fairly and thoroughly investigated and that final decisions are issued in a timely manner. Part 1614 also requires the EEOC to periodically review agency resources and procedures to ensure that agencies develop adequate factual records of discrimination complaints.

EEOC Management Directive 110, *Federal Sector Complaint Processing Manual*, dated October 22, 1992, provides guidance to Federal agencies about the contents, organization, availability, and disposition of complaint files. The Management Directive further requires agencies to submit to EEOC annual reports on federal pre-complaint counseling, formal complaint processing and disposition of federal EEO complaints.

Moreover, FDIC Circular 1210.18, *FDIC Records Management Program*, dated May 28, 1997, requires that FDIC records be maintained in a manner that promotes rapid access and enables proper disposition.

ASSESSMENT OF PERFORMANCE

ODEO recently began several initiatives to improve the state of its case information systems--primarily the file room and ODEO's automated case management system. While these initiatives will facilitate more reliable record keeping and case tracking, additional improvements are needed. During our review, several EEO Specialists expressed concern about the disorganized state of ODEO's formal complaint case file room. EEO Specialists could not always find file documentation. In some cases, entire case files were missing. We inspected the file room during our review and confirmed EEO Specialists' comments. The file room was not organized, open and closed files were located together, and stacks of loose correspondence and certified mail receipt cards had not been filed. Further, ODEO had not assigned a file room manager, and the file room door remained open during ODEO working hours. EEO Specialists were free to remove files without providing a record of the file location.

In November 1997, we discussed with ODEO management the need to perform a detailed inventory of case files as soon as possible and to file all loose correspondence. We also recommended locking the file room, assigning responsibility for the file room to one of the clerical staff, and requiring EEO Specialists to check out files for use. On December 3, 1997, the Associate Director, EEO and Diversity, told us ODEO had begun conducting an inventory of all discrimination case files and had filed all loose correspondence and certified mail receipt cards. The Associate Director further reported that, in the future, file room access would be limited and EEO Specialists would be required to check out files for use. In February 1998, we verified that these new procedures were in place. The file room was orderly, loose correspondence and receipt cards had been filed, the file room was locked, and only two ODEO staff had access to the file room. ODEO had begun requiring EEO Specialists to check out files and had developed case file request cards to help track file location.

Case Management Databases

ODEO's database system is antiquated and generally not used by EEO Specialists. Further, a number of fields were empty, raising questions about data quality. ODEO has purchased a software package, EEOMAS, which is designed to track EEO complaints and provide affirmative action reports. As of the date of this report, several ODEO personnel had received training on the new system, and the system had been installed on FDIC's mainframe, but EEOMAS was not fully operational. ODEO had also developed a methodology for transferring case data into the new system. While EEOMAS should improve ODEO's management of cases, ODEO needs to develop a more reliable method for entering future case information into the system. Further, ODEO has other databases that may duplicate EEOMAS capabilities. ODEO will need to review the need for these systems in the formal complaint program.

When we met with the COO in January 1998, he expressed the need for ODEO to develop a methodology for verifying the validity and completeness of case information for the initial transfer to EEOMAS that would ensure the new system had accurate, complete data. In February 1998, the Associate Director, Operations and Administration Branch, ODEO, explained that ODEO had developed a specific methodology for transferring case information to EEOMAS, and ODEO had begun preparing for the transfer of information. We met with an ODEO representative who explained the procedure as follows:

- An EEO Specialist reviews the case file, records case information onto a manual input form, signs the input form, and attaches it to the case file.
- A second EEO Specialist performs an independent review of the input form and case file and signs the form,
- The EEOMAS vendor enters the information from the input form into EEOMAS and prints a status report for each case.
- An EEO Specialist compares the EEOMAS status report to the input form.

To the extent that case files contain complete and accurate source documentation, these procedures should be sufficient.

EEOMAS should be a more effective system than ODEO's existing tracking system; however, ODEO management will need to ensure complete case information is entered into the system and establish a better process for data input. ODEO did not have written or standard procedures for data input. Several EEO Specialists worked on a single case at the various stages of the complaint process. In some instances, one specialist performed the accept/dismiss determination, a second specialist reviewed the report of investigation, and a third specialist prepared the FAD. When correspondence was mailed or received, certain information was entered into the case management database. A clerk within ODEO's Information Management Group maintained the existing database and performed data entry. The EEO Specialists were supposed to provide a completed data input sheet with a copy of the source document to the clerk for input into the system. Instead, the data input sheet was not always used, and specialists delivered information orally or provided the clerk a copy of source documents. Further, some specialists told us they did not provide any information to the clerk.

Going forward, ODEO plans to continue the practice of having the clerk enter all case information into EEOMAS. EEO Specialists will complete a data input sheet and forward it to the clerk for input. EEO Specialists in the field will e-mail their data input sheet to the clerk. The representative stated that concerns about the sensitive nature of complaint data and about data quality prompted ODEO to restrict EEOMAS access to only a few ODEO staff. The representative explained that EEOMAS produces periodic status reports of cases that management can use to identify incomplete data fields. The representative stated that ODEO management has also communicated to the EEO Specialists the importance of reporting complete information on the data sheets for input into the system.

While these efforts should help, we believe ODEO needs to develop a more reliable and more efficient method of entering case information into EEOMAS. Accordingly, we recommended ODEO continue to identify ways to improve its data input procedures.

ODEO has additional automated systems for monitoring counseling activity and for inventorying formal complaint correspondence that may duplicate capabilities offered by EEOMAS. Further, these applications will not be connected to EEOMAS. The Affirmative Employment and EEO Counseling Section maintains a spreadsheet file of all counseling contacts with pertinent case information. An ODEO representative told us ODEO planned to maintain the spreadsheet file for a brief period of time, but intended to eventually eliminate the spreadsheet file and maintain counseling activity information on EEOMAS. Subsequent to our draft report, ODEO did transfer informal case information from the spreadsheet to EEOMAS.

ODEO also maintains the ODEO Repository Database, a database file containing information about correspondence received and mailed by ODEO. ODEO's Minority and Women Outreach Program Section also uses the Repository Database, so it is questionable whether this application can be eliminated. However, EEOMAS has data fields for recording and tracking information about correspondence. Accordingly, we recommended that ODEO consider using EEOMAS to record correspondence information related to discrimination complaints instead of the Repository Database.

FACTORS CONTRIBUTING TO PERFORMANCE

ODEO did not have file room procedures for maintaining and safeguarding case files. Further, ODEO's method of entering information into its automated case management system was inefficient and unreliable. Finally, we identified an overall lack of management attention to data quality and records management that contributed to the state of ODEO information management systems.

CONCLUSIONS AND RECOMMENDATIONS

ODEO has taken action to refine its case information systems, and these actions should improve ODEO's ability to meet federal sector EEO time frame requirements. However, ODEO will have to be more diligent about maintaining information and entering complete data into information systems.

Historically, ODEO staff could not always find files or pertinent documents quickly, case tracking database fields were not always complete or accurate, and ODEO managers did not always know the status of cases or tasks assigned. Such an environment increased the possibility of ODEO missing case requirements and milestones. Further, it increased the potential for ODEO reporting inaccurate information to EEOC. Finally, such information systems made it difficult for managers to assess staff timeliness and performance.

During our review, we informally recommended that ODEO:

- Conduct a detailed inventory of open case files,
- Appoint a file room manager and develop procedures for safeguarding and requesting access to files, and
- Identify, inventory, make disposition decisions, and archive closed files.

ODEO has conducted an inventory of its case files and instituted new file room procedures. We verified that these actions were successfully implemented or were in process.

With respect to ODEO's case management system, ODEO has purchased and installed a new system. During our review, we stressed the importance of entering complete, accurate case information into the new system and recommended ODEO develop procedures to reconcile data accuracy between the case files and the current case management database. Further, FDIC's COO expressed concerns about ODEO's plans for transferring case information to the new system. ODEO developed and implemented procedures for transferring case information to EEO MAS. We reviewed those procedures and concluded the procedures were adequate, subject to the accuracy and completeness of source information in the complaint files.

In addition to the measures discussed above, we also recommended the Director, ODEO, take the following actions:

- (2) Consolidate the informal counseling spreadsheet into the EEOMAS case management system.
- (3) Consider discontinuing recording discrimination complaint correspondence information in the ODEO Repository Database and instead only record correspondence information into the EEOMAS case management system.
- (4) Develop improved procedures for entering future case information into the EEOMAS case management system. These procedures should address responsibility for data input and review and include controls to ensure data reasonableness and accuracy.

Informal Counseling

Federal law requires aggrieved persons to consult a counselor prior to filing a complaint to attempt to informally resolve the complaint. ODEO has made significant improvements to its informal counseling program. However, additional procedures are needed regarding the counselors' role in resolving disputes and in communicating with FDIC managers. Because ODEO does not have written policies, EO Specialists' approaches to counseling may be inconsistent, and critical information may not be communicated to the appropriate level of management. Further, until recently, ODEO policies did not require completion of a counselor's report until a formal complaint had been filed. Consequently, report preparation and review consumed much of the formal complaint time frame.

BACKGROUND

29 CFR Part 1614.105 requires that aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or handicap must consult a counselor prior to filing a complaint in order to try to informally resolve the matter. The law further provides the counselor should not attempt in any way to restrain the aggrieved person from filing a complaint.

EEOC Management Directive 110, provides guidance for seeking resolution during the informal counseling phase. The Directive states:

“In almost all instances, informal resolution, freely arrived at by all parties involved in the dispute, is the best outcome of a counseling action. In seeking resolution, the counselor must listen to and understand the viewpoint of both parties so that (s)he is able to assist the parties in achieving resolution. The counselor's role is to facilitate resolution, not develop or advocate specific terms of an agreement. The counselor must be careful not to inject his/her views on settlement negotiations.”

Management Directive 110 provides the following guidance for preparing the counselor report:

“The counselor must submit, to the office designated to accept formal complaints and to the complainant, the report of inquiry. This must be done within 15 days after notification by the EEO Officer or other appropriate officials that a formal complaint has been filed.”

ODEO PROCESS FOR INFORMAL COUNSELING

ODEO has eight EO Specialists in the field who perform counseling full time and one EEO Specialist in headquarters who performs counseling and affirmative employment duties. Further, ODEO has 27 collateral duty counselors in headquarters and in the field upon whom ODEO can rely to conduct informal counseling. For the purposes of this report, “counselor” is used to refer to EO Specialists performing counseling and collateral duty counselors. The counseling process follows:

- The complainant contacts the counselor.
- The counselor conducts an initial interview and describes complaint procedures and the complainants’ rights and responsibilities. The counselor obtains information about the bases and issues of the complaint, the discriminatory event, the alleged discriminating official (ADO), and witnesses. The counselor completes a worksheet with this information and e-mails this worksheet to a secretary at headquarters.
- The headquarters secretary inputs this information into a spreadsheet that is used to track counseling cases.
- The counselor conducts interviews with managers and witnesses and explores the possibility of early resolution.
- If the counselor cannot resolve the matter within 30 calendar days (unless resolution is probable and the complainant agrees to a 60 day extension), the counselor issues an NRTF to the complainant.
- The complainant must submit his/her formal written complaint to ODEO within 15 calendar days of receipt of the NRTF.
- Once a formal complaint is received, the headquarters secretary requests a copy of the counselor report from the counselor.

ASSESSMENT OF PERFORMANCE

ODEO has significantly enhanced its counseling program during the past year. ODEO’s informal counseling program is located in the Affirmative Employment and EEO Counseling Section. All aggrieved persons must participate in the counseling program prior to filing a formal discrimination complaint. Accordingly, the measures taken to improve the counseling function have also had a positive impact on the formal complaint program. Significant improvements include:

- Around March 1997, ODEO hired eight EO Specialists through the Corporation’s crossover program to perform employee counseling. Currently, an EO Specialist is located in each of FDIC’s eight regional offices. These specialists are only performing counseling. ODEO intends for these specialists to assume some of the formal complaint processing responsibilities, such as preparing

FADs, in the future. Previously, FDIC used collateral duty counselors. However, the part-time nature of the work did not provide an adequate incentive to ensure that counseling was performed timely or thoroughly. Further, the quality of collateral duty counselors' reports was inconsistent and sometimes unacceptable.

- The EEO Counselor Program Coordinator developed a spreadsheet program to monitor counseling cases assigned to EO Specialists. This spreadsheet is independent of ODEO's formal complaint database. The spreadsheet tracks case information as well as task assignment and task due dates.
- The Affirmative Employment and EEO Counseling Section developed individual performance expectations for managers and EO Specialists to ensure that written products are prepared and reviewed timely. For example, the EO Specialist is required to complete and submit a counselor worksheet within 2 days of the initial interview with the complainant. Further, once headquarters requests a counseling report, the EO Specialist is required to submit a draft report within 5 days and headquarters EO Specialists are given 5 days to complete their review of the draft report.
- The EEO Counselor Program Coordinator developed an EEO Counselor's Worksheet and Report to facilitate framing disputant bases and to assist in preparing the counselor's report. The worksheet helps to ensure the field EO Specialist obtains information necessary to: (1) determine whether the counselor contact meets all statutory procedural requirements, (2) document the witnesses contacted during counseling, and (3) present the counselor's attempts to resolve the matter. Further, the structure of the worksheet helps to ensure consistency among reports from the various EO Specialists performing counseling.
- The Affirmative Employment and EEO Counseling Section has also drafted a training program for its EO Specialists. This training program includes classes on EEO law, mediating employee disputes, investigating complaints of discrimination, and writing FADs. The Associate Director, EEO and Diversity Branch, told us she intends to implement the training program and require all EO Specialists in the Affirmative Employment and EEO Counseling Section and EEO Specialists in the Formal Complaint Processing Section to attend.

Notwithstanding the above initiatives, we identified several areas of the counseling program where improvements could be made, including: clarifying the counselors' role in resolving disputes, delineating policies for communicating case information to management, and improving procedures for preparing and reviewing counselor reports.

Counselor's Role in Effecting Settlement

We identified differing views among EO and EEO Specialists in the Affirmative Employment and EEO Counseling Section regarding to what extent counselors may pursue settlement during the informal counseling stage. Two Specialists we interviewed described their counseling role as that of a messenger, or presenter of information, between the aggrieved person and the ADO. One EO Specialist described his role as that of a broker between the two parties. Finally, other EO Specialists

indicated that they do offer ideas to both parties for reaching a settlement and guidance to complainants, such as discussing the reasonableness of a complainant's proposed remedy or alternative means of resolution.

Federal sector EEO law is somewhat ambiguous on the subject of counselor settlement efforts. While the law states the goal of pre-complaint processing is to try to informally resolve the matter, EEOC guidance precludes the counselor from developing or advocating specific terms of a settlement agreement. The Chief, Affirmative Employment and EEO Counseling Section, told us the EEO Specialists have the authority to facilitate settlements and should not simply process cases through the informal process to facilitate the aggrieved person's filing of a formal complaint.

Communication with Management

A number of the EO Specialists we interviewed stated that counselors should provide FDIC management with enough information to allow management to resolve the case. However, several division managers told us that ODEO did not always provide enough case information to allow divisions to settle complaints.

For example, we spoke with one Assistant Director who is responsible for approving his division's settlement agreements. The Assistant Director reported that he was not always notified of counseling sessions within the division even though he is the only person with responsibility to settle cases. The Assistant Director believed it was the counselor's responsibility to notify the appropriate management officials of informal counseling sessions, because the involved manager has no incentive to notify his supervisors of informal or formal complaints.

The Assistant Director further reported that when he was aware of counseling sessions or settlement attempts, ODEO usually did not provide enough specific information about the dispute or complaint to allow the division to settle the issues. The Assistant Director said he usually did not receive sufficient case information until the complainant requested a hearing from EEOC and CAS attorneys became involved. By this time, the aggrieved person had filed a formal complaint and an ODEO contractor had performed an investigation. The Assistant Director said the division would be amenable to resolving disputes early if ODEO notified the proper management levels and provided sufficient case information.

Several managers indicated that they did not understand certain parts of the informal and formal complaint process. These managers believed EO Specialists could do more to explain the process. ODEO does require managers and supervisors to attend EEO Training for Managers and Supervisors. However, our perception is the training stresses what managers should do to avoid discrimination cases, instead of addressing what managers should do if they become involved in a discrimination case.

Counselor Report Timeliness

We also identified procedures, related to the preparation and review of counselor reports, which impacted report timeliness as well as ODEO's ability to comply with formal complaint time frames. EO Specialists provide counseling to aggrieved persons and issue a NRTF if the dispute is not settled. However, at the time of our review, ODEO did not prepare a counseling report until a formal complaint was filed. As discussed in other sections of this report, once a complaint is filed, ODEO has 180 days to issue an ROI to the complainant. Accordingly, ODEO was using a portion of the 180-day time frame to complete the counselor's report.

Several EEO Specialists in the Formal Complaint Processing Section expressed concern about the policy of waiting to prepare counselor reports until the formal complaint had been filed. These specialists told us by the time they received a completed counselor report, weeks and sometimes months had elapsed since the date of complaint.

According to the EEO Counselor Program Coordinator, the rationale behind the policy was to avoid preparing reports for those disputes that were settled during counseling. As discussed in a separate section of this report, during 1997, approximately 80 percent of ODEO's counseling contacts resulted in formal complaints. Accordingly, the impact of preparing counselor reports during the formal complaint stage may have outweighed the benefits of this policy. Further, most of the field EO Specialists we interviewed told us that they completed their reports as counseling was ongoing while information was fresh in their minds. ODEO changed this policy in March 1998 and began requiring counselors to complete counselor reports during the informal counseling stage.

We also noted concerns from EO Specialists in the field that supervisory reviews of counselor reports were lengthy and not substantive in nature and did not add value to the counselor report. Our understanding of the review process is that the field EO Specialist writes the counselor report and submits it to the headquarters Affirmative Employment and EEO Counseling Section where the report is assigned to a headquarters EO Specialist for review. The headquarters EO Specialist works with the report preparer to edit the report. The revised report is then submitted to the EEO Counselor Program Coordinator for a second level review. The Coordinator acknowledged that because of her busy schedule, her review of counselor reports is sometimes delayed.

As mentioned above, ODEO has developed a standard EEO Counselor's Worksheet and Report. In our opinion, a standard review of the worksheet to ensure that critical information elements are complete and reasonable, such as those necessary to make accept/dismiss decisions, would benefit ODEO more than grammatical edits of the counselor report narrative.

FACTORS CONTRIBUTING TO PERFORMANCE

ODEO management has not issued policies and procedures delineating EO Specialists' role in resolving cases, or communicating with FDIC management. Several managers reported they were not obtaining the information they needed to effect settlement during the informal counseling stage. Further, counselor reports were not being issued timely because ODEO's policy only required

preparation of a counselor report after a complaint had been filed. Finally, the current counselor report review policy is also negatively affecting report timeliness.

CONCLUSIONS AND RECOMMENDATIONS

ODEO has made substantial improvements to its informal counseling program. The use of full-time counselors and development of a tracking system, standard worksheet, training curriculum, and time frame-related performance expectations should benefit the program. However, more can be done to improve this function. EO Specialists are uncertain to what extent they can go to resolve complaints during the counseling phase. Further, FDIC managers may not be receiving the information needed to: resolve complaints, be informed of the complaint process, and monitor the status of disputes or complaints against their division. Finally, the policy for preparing counselor reports was impacting the Formal Complaint Processing Section's efforts to comply with federal sector EEO time frames. Accordingly, we recommended the Director, ODEO:

- (5) Issue guidance to EO Specialists within the Affirmative Employment and EEO Counseling Section clarifying to what extent specialists should participate in, and attempt to reach, settlements of discrimination complaints.

With regard to communicating case information to the proper levels of management and informing managers of the discrimination complaint process, we recommended the Director, ODEO:

- (6) Issue guidance to EO Specialists within the Affirmative Employment and EEO Counseling Section delineating the appropriate levels of divisional management that EO Specialists should contact or notify when performing counseling.
- (7) Consider working with division and office management to appoint liaisons within the major divisions and offices to serve as focal points for sharing case information and to ensure that proper management officials are notified of case issues and included in settlement efforts.
- (8) Contact selected FDIC managers and liaisons from each division and office to determine what information they require to settle complaints. Based on management responses, issue guidance to EO Specialists within the Affirmative Employment and EEO Counseling Section explaining what information should be shared with FDIC managers to assist in achieving early resolution.
- (9) Consider revising the EEO Training for Managers and Supervisors course to better explain the discrimination adjudication process and what managers can expect in the event that they become involved in a discrimination complaint.

Finally, ODEO was waiting to prepare counselor reports until a formal complaint had been filed. As such, counselor reports were being prepared during the formal complaint process and were consuming time that should have been used to make accept/dismiss decisions and to conduct investigations. This

situation was exacerbated by ODEO's report review process. Accordingly, we recommended the Director, ODEO:

- (10) Revise ODEO policy to require preparation, submission, and review of counselor reports during the informal counseling stage.
- (11) Develop a standard review form to document the supervisory review of counselor reports. This review should focus on the critical information elements necessary to frame the bases and issues of the dispute and to judge the procedural compliance of the counseling contact.

Early Resolution of Informal Complaints

The EEOC recommends that federal agencies develop ADR programs to adjudicate discrimination complaints. ODEO's percentage of counseling contacts that result in formal complaints was higher than the average of other federal EEO offices and this percentage had increased over the past few years. CLIS is developing an ADR program for processing certain discrimination complaints. However, the administrative complaint process is the only avenue presently available to the complainant for resolving discrimination complaints. Accordingly, parties to those cases with the potential for resolution through ADR techniques may instead reach an impasse, follow the protracted formal complaint cycle, and add to ODEO's existing caseload.

BACKGROUND

The Administrative Dispute Resolution Act of 1990 (ADRA) authorized and encouraged federal agencies and departments to consider ADR as an alternative to litigation. ADRA defines "dispute resolution proceeding" as "...any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate." Although ADRA expired in 1995, it was reauthorized and signed into law in November 1996 as the Administrative Dispute Resolution Act of 1996.

Support for the use of ADR in the federal sector discrimination complaint process is further reflected in EEOC regulations. For example, 29 CFR 1614.603 requires agencies to take reasonable efforts to voluntarily settle complaints of discrimination as early as possible. The regulations also extend the counseling stage of the complaint process from 30 to 90 days in those instances where the complainant agrees to participate in an established ADR program.

Finally, in May 1997, EEOC's Federal Sector Workgroup issued a document: "*The Federal Sector EEO Process...Recommendations for Change.*" Among other things, the workgroup recommended that EEOC amend the regulations to require that all federal agencies establish or make available ADR programs to complainants in the EEO complaint process. Proposed changes to the federal sector EEO process, including this recommendation, were published in the *Federal Register* on February 20, 1998.

A number of federal agencies believe ADR produces higher resolution rates and quicker, lower cost resolutions. The term "ADR" covers a variety of dispute resolution techniques, usually involving intervention or facilitation by a neutral third party. Such techniques focus on understanding the disputants' underlying interests rather than the traditional approach of assessing the validity of each parties' positions. There are various types of ADR, each with different approaches, strengths, and weaknesses. Mediation and arbitration are the most popular forms of ADR. ADR may not be

effective for all types of cases, such as cases involving extreme sexual harassment or incidents of violence.

The overall goals of ADR are to avoid lengthy formal resolution proceedings and possible litigation; to lessen the impact that adversarial, emotionally charged disputes have on the involved organization; and to hopefully save time and money normally required in protracted administrative processes. Organizations participating in an ADR program for processing discrimination disputes hope to see a reduction in the number of informal counseling contacts that result in formal complaints.

ASSESSMENT OF PERFORMANCE

Historically, FDIC has experienced pre-complaint resolution rates lower than the national average of other federal agencies. The EEOC *Federal Sector Report on EEO Complaints Processing and Appeals* for fiscal year 1995 provided information on pre-complaint counseling efforts for 95 federal agencies, including FDIC. EEOC ranked the agencies by the percentage of counseling contacts that resulted in formal complaints, or inversely, each agency's pre-complaint resolution percentage. FDIC ranked 69th out of 95 agencies. EEOC found that, on average, counseling contacts resulted in formal complaints about 40 percent of the time for the 95 agencies. For FDIC, counseling contacts resulted in formal complaints 53 percent of the time. Further, FDIC reported an increase in counseling contacts resulting in formal complaints to over 80 percent during fiscal year 1997. At the time of this report, EEOC had not issued its federal sector report for fiscal year 1997.

FDIC established an ADR Unit in 1990 and the Unit is currently located within CLIS. FDIC's ADR program is available to provide advice and consultation regarding various types of disputes, including contracting disputes, asset-related disputes, and workplace disputes. ODEO and the Legal Division have recognized the need for ADR in resolving discrimination complaints and have been trying to develop an ADR program for use in adjudicating discrimination issues.

The Legal Division presented a proposal to ODEO dated October 10, 1997, recommending a pilot program for voluntary ADR occurring within 15 days of the initial contact with the EEO counselor. Specifically, the proposal recommended enhancing the informal counseling stage to include informal interest-based mediation between the employee, manager, and when appropriate, a Corporate representative with authority to settle the dispute at issue. The mediator would be neutral, trained in dispute resolution techniques, and not involved in any other aspects of the EEO complaint process. One option would be to use mediators from the ADR Unit. Finally, ADR discussions would be confidential pursuant to statute and could not be raised in subsequent proceedings in the event that ADR efforts were unsuccessful.

Since the start of our review, ODEO and the Legal Division had been discussing the type of ADR program that would be appropriate for FDIC and the organizational placement of the ADR program. FDIC's COO recently decided the ADR program for discrimination complaints would be organizationally located within the ADR Unit in CLIS.

FACTORS CONTRIBUTING TO PERFORMANCE

In our opinion, there are several reasons for FDIC's relatively high rate of counseling contacts resulting in formal complaints. These reasons include:

- Counselors are not trained in mediation techniques. Further, some counselors are unsure how far they can, or should go, to settle complaints.
- The complainant and ADO may not view the counselor as an independent party, thus both parties are wary of entering into settlement discussions with the counselor.
- Current counseling techniques focus on framing dispute bases and issues rather than identifying underlying complainant interests which could be more helpful in achieving a resolution.

BEST PRACTICES AT OTHER AGENCIES

Because the use of ADR in discrimination complaints is relatively new, comprehensive data on the benefits of ADR is not available. The GAO conducted a review of ADR programs at several federal agencies and private sector companies, *Alternative Dispute Resolution: Employers' Experiences with ADR in the Workplace* (GAO/GGD-97-157), dated August 1997. Most of the organizations reviewed by GAO had data to show that their ADR processes resolved a high proportion of disputes, thereby helping them avoid formal redress processes and litigation. Moreover, although data was not available within these organizations on actual time and cost savings achieved through ADR, representatives from most of these organizations believed that avoiding formal redress and litigation saved their organizations time and money.

Several of the agencies that we visited had ADR programs in place for processing discrimination complaints. The Department of the Air Force reported positive results from its ADR program. During 1997, Air Force processed over 800 cases through its ADR program and successfully resolved about 73 percent of those cases.

CONCLUSION AND RECOMMENDATION

FDIC does not have an ADR program for resolving discrimination complaints. Further, the number of FDIC counseling contacts that resulted in formal complaints was higher than the federal sector average. As a result, complainants must use the lengthy administrative process to have their complaints addressed. Complaints become protracted and parties become position-based and entrenched. Consequently, FDIC may miss opportunities to resolve cases early. Further, ODEO's overall caseload increases as the pre-complaint resolution rate decreases.

ODEO and the Legal Division have been working towards developing an ADR program. Also, during the course of our review, the COO decided the ADR program would be organized in the Legal Division. Because of these actions, we did not believe recommendations were necessary.

Accept/Dismiss Decision

Federal sector EEO law requires agencies to immediately acknowledge receipt of a complaint and to notify the complainant of which issues the agency will accept for investigation. The law provides specific grounds for dismissing complaints. During 1997, ODEO took an average of 107 days to notify complainants of which issues it decided to accept for formal processing or dismiss. Further, there is a perception that, in the past, ODEO accepted issues that should have been dismissed. ODEO could improve its performance in this area by revising existing procedures, establishing performance expectations, managing tasks more diligently, and screening issues more carefully. Without such actions, ODEO's caseload will continue to be negatively impacted and ODEO will have difficulty meeting statutory time frame requirements.

BACKGROUND

29 CFR Part 1614.102 requires each agency to provide for the prompt, fair, and impartial processing of complaints. Section 107 requires agencies to dismiss a complaint or portion of a complaint that meets certain criteria.

EEOC Management Directive 110, further requires agencies:

“Immediately upon receipt of a formal complaint of discrimination, the agency shall acknowledge receipt of the complaint in writing...The agencies must also inform the complainant of the issue(s) to be investigated and, if appropriate, that the complaint, or a portion of the complaint, is dismissed. This may be done simultaneously with the acknowledgement.”

The Management Directive further notes that to conserve program resources and program integrity, certain dismissals should be processed expeditiously. The Directive presents a number of instances under which complaints should be dismissed early in the administrative process, including instances where the complainant:

- Did not contact a counselor within 45 days of the discriminatory event,
- Raises a matter in his/her complaint that has not been brought to the attention of a counselor,
- Fails to file a formal complaint within 15 days of the counselor's NRTF a formal complaint, and

- Fails to state a claim, states a claim not covered by EEO statutes, or names an improper agency in the complaint.

Further, *Resolving Federal EEO Complaints*, a training manual prepared by EEOC in spring 1995, states:

“It is important that agencies dismiss cases when appropriate because dismissal is a mechanism that conserves EEO program resources, and ensures the EEO program’s integrity.

“Dismissal may come at any time during the processing of the complaint, depending on what basis for dismissal is relied upon.”

ODEO PROCESS FOR MAKING ACCEPT/DISMISS DECISIONS

ODEO has five EEO Specialists who make accept/dismiss decisions. EEO Specialists we interviewed characterized the accept/dismiss decision as a procedural step in the formal complaint process. For the most part, the EEO Specialist reviews the counselor report and the formal complaint to determine whether the counseling contact and resulting complaint meet the procedural requirements of federal sector EEO law. The accept/dismiss process follows:

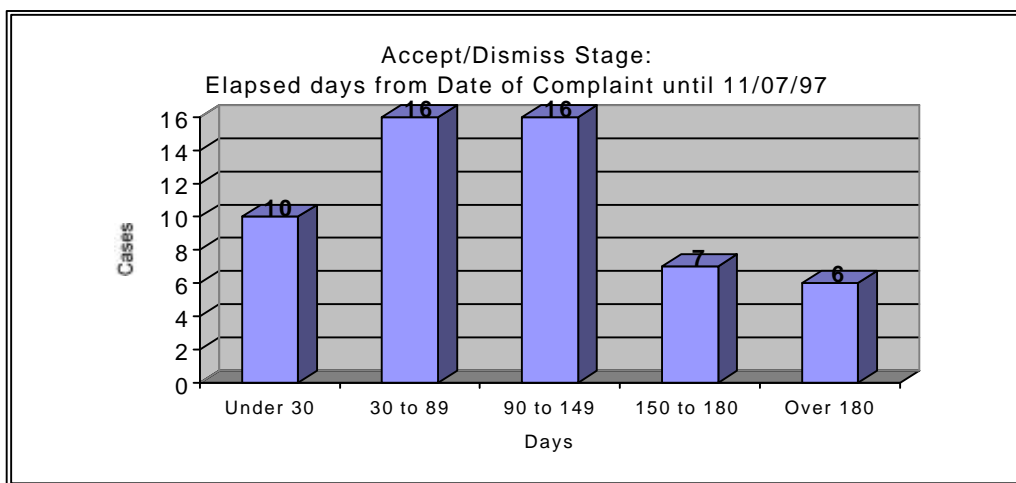
- The formal complaint is received and opened by an ODEO secretary. The secretary logs the complainant name into the ODEO Repository Database. An ODEO clerk assigns a docket number to the case, sends an e-mail notifying ODEO managers that a complaint has been received, and prepares a notice of receipt (NOR) indicating that FDIC received the complaint. The Associate Director, EEO and Diversity Branch, signs the NOR and the NOR is mailed to the complainant.
- A second clerk enters complaint information into ODEO’s formal complaint tracking system.
- The first clerk creates an administrative file for the complaint. The secretary requests a copy of the counselor’s report from the counselor. Upon receipt, the secretary forwards the counselor’s report to an EO Specialist in the Affirmative Employment and EEO Counseling Section for review. Following the review, the secretary places the reviewed, signed counselor report in the administrative file and provides the file to the Associate Director for assignment.
- The Associate Director assigns the case to one of the EEO Specialists in the Formal Complaint Processing Section for a determination of whether to accept, dismiss, or partially dismiss the complaint issues. The EEO Specialist prepares a draft accept/dismiss letter and submits the letter to an experienced EEO Specialist or to the Associate Director for review.
- Following favorable review, the Associate Director signs the acceptance letter or partial acceptance letter. The Director, ODEO, signs dismissal letters. The accept/dismiss letter is then mailed to the complainant. The complainant has 30 calendar days to appeal dismissals to the EEOC.

Several EEO Specialists indicated that, for the average complaint, it should take an EEO Specialist less than a week to complete an accept/dismiss decision. According to the formal complaint database, it was taking ODEO much longer to make accept/dismiss decisions and issue accept/dismiss letters.

ASSESSMENT OF PERFORMANCE

Timeliness of Accept/Dismiss Decisions

The timeliness of accept/dismiss decisions could be improved. For the 205 cases in ODEO's formal complaint inventory, about 27 percent were in the accept/dismiss stage. For those cases in ODEO's open inventory for which accept/dismiss letters had been completed, it took ODEO an average of 191 days to make accept/dismiss determinations. For complaints filed during 1997, it took ODEO an average of 107 days to determine whether to accept or dismiss cases. The following figure presents the elapsed days from the date of complaint until November 7, 1997 for the 55 cases in the accept/dismiss stage.



Source: ODEO database of open cases.

It appeared that some of the accept/dismiss timeliness issues could be attributed to ODEO's policy for preparing counselor reports, and to a lack of performance expectations and management attention in the assignment and monitoring of accept/dismiss tasks. As discussed in a separate section of this report, until recently, ODEO waited until a formal complaint was filed to prepare a counselor's report. While this policy had certain benefits for the informal counseling stage, preparing the counseling report after the complaint had been filed consumed part of the 180-day investigation period. Several EEO Specialists we interviewed attributed delays in issuing accept/dismiss letters to the counselor reporting policy. Further, it appeared this policy precluded

the EEO Specialist from making accept/dismiss determinations early in the complaint process, as required by EEOC Management Directive 110.

Moreover, as discussed previously in this report, ODEO has not established performance expectations for EEO Specialists and managers. Based on our interviews with ODEO management and our reviews of the ODEO formal complaint database, it appeared managers were not always assigning accept/dismiss tasks timely or establishing task completion dates. ODEO's formal complaint database includes data fields for the date the accept/dismiss task is assigned, the EEO Specialist assigned, and the date the accept/dismiss letter is issued. Although these fields could be used to track performance, in many cases these fields were incomplete. In the few instances where information was available, we identified protracted delays related to task assignment dates and task completion dates entered into ODEO's formal complaint database.

The EEO Counselor Program Coordinator developed a series of milestone dates for performing the accept/dismiss step and conducting an investigation of the complaint. In our opinion, establishing time frames and holding staff and managers to those time frames would help to ensure accept/dismiss decisions are processed more timely. We have presented excerpts from the Coordinator's document of milestones as a suggested strategy in conjunction with recommendation 12.

Quality of Accept/Dismiss Decisions

EEO Specialists told us it was their perception that, in the past, ODEO accepted any complaint that was filed, regardless of whether the complaint met the procedural issues required by federal sector EEO law. These specialists attributed this policy to prior ODEO management. For example, one EEO Specialist told us about three cases filed by three individuals alleging the same complaint against the same manager. According to the EEO Specialist, the complainants did not contact a counselor until 204 days after the alleged discriminatory event. Federal sector EEO law requires counselor contact within 45 days of the discriminatory event. The specialist said ODEO should have never accepted the complaints. However, the complaints were accepted, and a contractor was hired to conduct investigations of all three complaints. The same contractor was then hired to prepare FADs for the three complaints. The EEO Specialist was reviewing the contractor's decisions when he noted the procedural timeliness violation. The specialist could not determine who accepted the complaints or why the complaints were accepted. The specialist prepared new FADs dismissing each case because of untimely counseling contact and submitted the FADs for review around June 1997. As of January 1998, these three cases still appeared on ODEO's open database in the FAD stage.

Several FDIC managers that we interviewed also stated that it was their perception that ODEO historically accepted issues for investigation that should have been dismissed. Further, a CAS official told us that CAS continues to receive cases going to the hearings stage which contain issues that should not have been accepted by ODEO.

However, ODEO management and EEO Specialists told us ODEO has made a conscious effort to more closely analyze complaints and dismiss issues when appropriate. ODEO's annual statistics to the EEOC appear to support ODEO's efforts. EEOC's *Federal Sector Report on EEO Complaints Processing and Appeals* includes statistics for how federal agency EEO offices closed complaints. EEOC categorizes closures as dismissals, withdrawals, settlements or merit decisions. During fiscal year 1996, dismissals accounted for approximately 16 percent of ODEO's total case closures. On average, dismissals accounted for about 35 percent of total case closures for all of the agencies reporting to EEOC. However, for fiscal year 1997, ODEO reported an increase in its percentage of dismissals to almost 38 percent of total closures. Fiscal year 1997 statistics were not available from EEOC as of the date of this report.

Quality of Counselor Reports

Several EEO Specialists in the Formal Complaint Processing Section told us that counselor reports sometimes lacked critical information necessary to make accept/dismiss decisions. In those cases, EEO Specialists had to contact the counselor or the complainant to obtain additional information. Further, several EO Specialists in the Affirmative Employment and EEO Counseling Section told us they did not fully understand what factors the Formal Complaint Processing Section reviewed in making accept/dismiss decisions. We referred those EO Specialists to the appropriate sections of EEOC Management Directive 110.

As discussed in a separate section of this report, ODEO has developed a standard EEO Counselor's Worksheet and Report, which should capture all of the counseling-related information necessary to make accept/dismiss decisions. The Formal Complaint Processing Section relies on the counselor's report and the formal complaint to make its accept/dismiss decision. Further, the counselors advise complainants on what information has to be included in a complaint.

Accordingly, it is important for the counselors to have a clear understanding of the accept/dismiss process and the criteria used to make accept/dismiss decisions so the counselor can properly advise the complainant and obtain the critical information necessary for the accept/dismiss decision. We believe additional training in the accept/dismiss area may be warranted for EO Specialists in the Affirmative Employment and EEO Counseling Section and EEO Specialists in the Formal Complaint Processing Section. In a separate section of this report, we discussed ODEO's plans to implement a training program for all EO and EEO Specialists.

Further, given the timeliness and quality issues discussed above, we believe a checklist recording an EEO Specialist's accept/dismiss review would help to document the review, ensure all accept/dismiss criteria were considered, and hold staff and managers accountable for their actions. The checklist could include assignment and completion dates to track timeliness and should be signed by the EEO Specialist conducting the review to indicate task responsibility.

FACTORS CONTRIBUTING TO PERFORMANCE

ODEO's policy for completing counselor reports after a complaint has been filed unnecessarily consumed part of the 180-day period. While this policy may have provided some benefit to the Affirmative Employment and EEO Counseling Section, the policy had a negative impact on the Formal Complaint Processing Section's ability to make accept/dismiss determinations and investigate complaint issues within 180 days of the complaint file date. In addition, counselor reports may not have always contained adequate information to make accept/dismiss decisions.

Moreover, ODEO has not established performance expectations for individual staff and supervisors to specify time frame and due date information for completing accept/dismiss letters. ODEO was not effectively using existing case management systems to track the assignment of cases to EEO Specialists and monitor specialists' progress in preparing accept/dismiss letters. Finally, once specialists prepared accept/dismiss letters, it appeared ODEO management was not always ensuring decisions were sound and supported by case documentation.

BEST PRACTICES AT OTHER AGENCIES

We interviewed representatives from several EEO offices at other federal agencies to identify best practices for making accept/dismiss decisions. At the Department of Treasury, accept/dismiss decisions are made at one of four Regional Processing Centers. Treasury's goal is to complete accept/dismiss decisions in 30 days. In reality, it is taking 45 to 60 days to complete accept/dismiss decisions partly because of delays in obtaining counselor reports from the Treasury bureau where the complaint originated, such as the U.S. Customs Service or Internal Revenue Service. Treasury has also developed standardized accept/dismiss letters for the various types of cases. These standard letters can be used in about 75 percent of the cases.

Two of the agencies we visited reported that they dismiss a large portion of the complaint issues. Air Force prepares accept/dismiss letters at the base level. The base Chief EEO Specialist and Judge Advocate General draft the accept/dismiss letter. It takes Air Force about 30 days to issue the accept/dismiss letter.

The TVA accept/dismiss process is more aggressive. TVA has one attorney who completes all accept/dismiss decisions. TVA's goal is to complete accept/dismiss decisions in 5 to 10 days. The goal is included in the attorney's performance plan. Further, the attorney is evaluated on the number of cases TVA loses on appeal.

CONCLUSIONS AND RECOMMENDATIONS

ODEO needs to improve the timeliness and quality of its accept/dismiss decisions. ODEO was taking much longer to issue accept/dismiss letters than EEO offices at other federal agencies. Moreover, there is a perception that ODEO has accepted cases for investigation that should have been dismissed on procedural bases. As a result, program resources are not being used efficiently or effectively,

ODEO is not meeting federal sector EEO time frame requirements, and ODEO's formal complaint caseload is being negatively impacted. Accordingly, we recommended the Director, ODEO, take the following actions:

- (12) Develop performance expectations for individual managers and EEO Specialists for completing accept/dismiss decisions based on time frames and quality of work.

Suggested Strategies for Implementation

Based on interviews with EEO Specialists and EEO offices at other federal agencies, 30 calendar days from the receipt of the complaint appears to be a realistic time frame for the assignment, preparation and supervisory review of accept/dismiss decisions. The following is an example of how these 30 days might be segmented:

- Associate Director assigns accept/dismiss task within 2 days of receipt.
- EEO Specialist completes accept/dismiss letter within 15 days. Situations outside of the 15-day timeframe should be explained by e-mail to the Associate Director.
- Accept/dismiss reviewed by supervisor or Associate Director within 5 days.
- Review changes completed by EEO Specialist within 3 days.
- Accept/dismiss reviewed and approved by the supervisor and/or Associate Director within 5 days.

This suggestion assumes that ODEO continue to prepare, review and issue its counselor reports during the informal counseling phase. As discussed in other sections of this report, ODEO changed its counselor reporting policy to require completion of counselor reports during the informal phase.

With respect to measuring quality of work performance, we suggested ODEO develop a checklist for use during the accept/dismiss stage to document the EEO Specialist's decision. Such a checklist would help to document the review, ensure all accept/dismiss criteria were considered, and hold staff and managers accountable for their actions. The checklist should include:

- Task assignment and completion dates to track timeliness,
 - Dismissal criteria listed in 29 CFR Part 1614,
 - EEO Specialist's signature to evidence task ownership, and
 - Date and signature of manager conducting the supervisory review.
- (13) Provide training for EO Specialists in the Affirmative Employment and EEO Counseling Section and EEO Specialists in the Formal Complaint Processing Section on accept/dismiss decisions.
 - (14) Establish boilerplate accept/dismiss letters for the various EEO bases of discrimination.

Investigation Stage

Federal sector EEO law requires the agency to develop a record upon which to make findings, conduct an impartial investigation, and issue an ROI to the complainant within 180 days of the date the complaint was filed. Further, the standard agreement used by FDIC to contract for investigations imposes time frames on contractors for completing investigations and on ODEO for reviewing and requiring changes to ROIs. Overall, ODEO was not always delivering ROIs to complainants within required time frames. Contractors were not always completing investigations timely, and ODEO was not always reviewing ROIs in time to require the contractor to correct report deficiencies. ODEO attributed timeliness issues to administrative delays in awarding contracts and poor cooperation between investigators and FDIC managers. In our opinion, improved management, established performance expectations, and better contract administration are also needed to address the timeliness issues.

BACKGROUND

29 CFR Part 1614.108 (b) requires the agency to develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. In addition, 29 CFR Part 1614.108 (e) requires the agency to complete its investigation in 180 days of the date of filing of an individual complaint.

According to FDIC's basic ordering agreement for investigations, the contractor is required to submit the ROI to the ODEO oversight manager within 60 calendar days of receipt of approval of the investigative plan. If the contractor is not otherwise notified by ODEO within 45 calendar days of receipt of the completed work product, the product will be considered acceptable.

ODEO PROCESS FOR CONDUCTING INVESTIGATIONS

ODEO contracts out its investigations to any one of four firms. Investigators have 10 days from the time of assignment to prepare and submit an investigative plan to ODEO. An EEO Specialist has 4 days to review and approve the plan. The investigator then has a total of 60 days to complete the investigation and deliver an ROI to ODEO. The completed ROI is then assigned to an EEO Specialist for review.

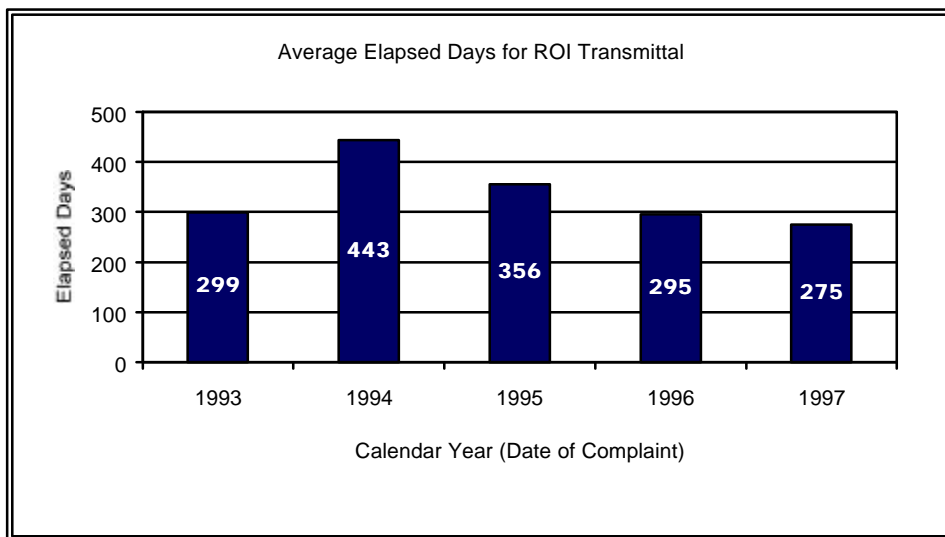
One EEO Specialist is the Oversight Manager (OM) for all of the investigation contracts. This specialist contacts ASB to request contract services, reviews the contractor's investigative plan and monitors the investigation. The specialist told us she would like to have more of an opportunity to

oversee contracts. Currently, the specialist maintains a manual calendar with time frames for each investigation. However, the specialist told us she does not have time to perform any additional monitoring of the investigator's progress or quality of work. In addition, the specialist prepares copies of files and other information for investigators. The same EEO Specialist is also responsible for reviewing accept/dismiss letters and coordinating with CAS during the hearing stage.

ASSESSMENT OF PERFORMANCE

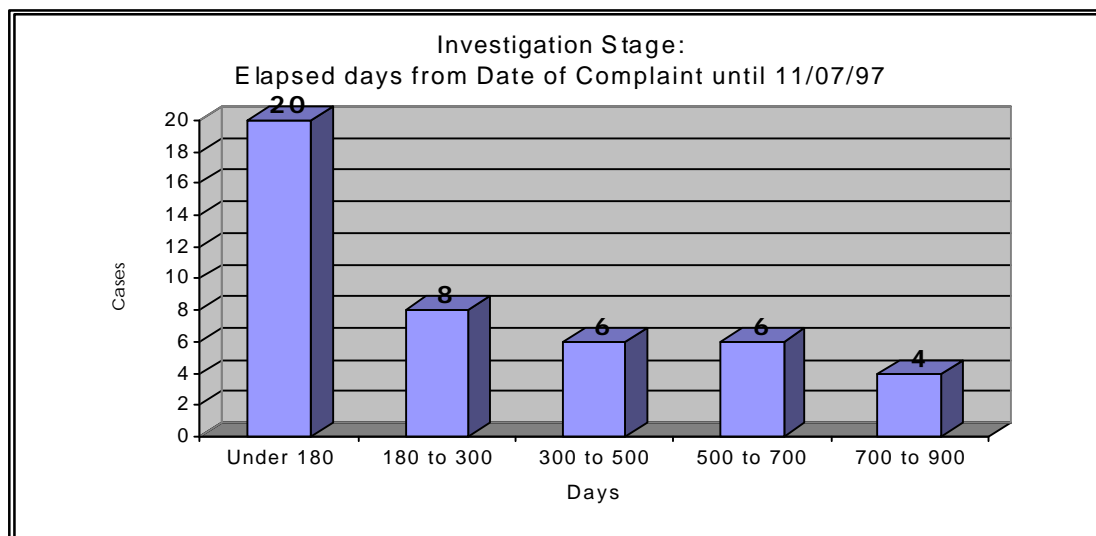
Timeliness of ROIs

ODEO needs to improve its timeliness of reporting the results of investigations to complainants. Federal sector EEO law requires agencies to conduct an investigation and deliver an ROI to the complainant within 180 days of the date a complaint is filed. Using ODEO's formal complaint databases for open and closed cases, we analyzed elapsed days for all open and closed complaints by year during calendar years 1993 through 1997. We calculated the average elapsed days from the date the complaint was filed until the ROI was transmitted to the complainant.



Source: ODEO Databases of Open and Closed Cases

Although ODEO's ROI transmittal statistics have improved since 1994, ODEO still was not meeting federal sector EEO time frames for completing and transmitting investigations. As of November 7, 1997, ODEO had 44 open cases in the investigation stage. Over half of those cases had been outstanding for more than 180 days.



Source: ODEO Database of open cases.

ODEO also needs to more closely monitor its contractors to ensure they complete investigations timely. Contractors are supposed to complete investigations and deliver an ROI to ODEO in 60 days. However, the basic ordering agreement used for contract investigations contains no penalty clauses or sanctions in the event a firm exceeds the reporting time frame. According to ODEO's database of open cases, as of November 7, 1997, it took investigation contractors an average of 130 days to complete investigations, from the time ODEO assigned the investigation until the contractor submitted the ROI. It should be noted that this statistic includes the 10-day investigative planning period and FDIC's 4-day review period. Accordingly, investigations should have been completed within 74 days from the assignment of the investigation.

Finally, ODEO needs to complete its review of draft ROIs more timely to ensure product deficiencies are reported to the contractor and corrected within contract terms. Under the terms of the standard FDIC contract, ODEO has 45 days following receipt of the deliverable to require changes to the product or to require that additional work be performed. After the 45-day period, the contractor is under no obligation to perform additional work. The ODEO OM told us ODEO rarely completes its review of the ROI within the 45-day period. According to ODEO's database of open cases, it has historically taken ODEO an average of 70 days from the time an ROI is received until it is reviewed and approved by an EEO Specialist and transmitted to the complainant.

The OM attributed some of the delays to the administrative process of requesting contract services from ASB, obtaining approvals, and obtaining contract signatures. The OM also attributed delays to a lack of cooperation between contract investigators and FDIC managers during the conduct of the actual investigation. However, we believe other factors may have also contributed to the timeliness issues, including limited contract monitoring by ODEO and a lack of management attention to reviewing ROIs prepared by contractors.

Quality of Investigations

The OM has been generally satisfied with the quality of work of the four investigative firms. The OM tracks the names of unsatisfactory investigators and asks the contractors for replacements if an unsatisfactory investigator is assigned to an FDIC contract.

We received mixed opinions from FDIC managers outside of ODEO regarding the quality and timeliness of contract investigators. One Associate Director told us the work of investigators with whom she had worked was inadequate and untimely. This official believed investigators did not know enough about her division's program to perform quality investigations. The official recommended the investigative function be performed in-house.

Other division managers reported the quality of the investigations varied by individual and firm. Some managers said investigators did not complete their jobs in a professional manner and asked for information that was irrelevant to the complaint. Another manager said a recent experience with an investigator was "relatively painless."

Finally, several managers expressed concerns that ODEO did not keep them apprised of the status of formal complaints in their respective divisions. One Associate Director characterized contract investigations as disappearing and then resurfacing several years later.

FACTORS CONTRIBUTING TO PERFORMANCE

Investigative timeliness and perceived quality issues were apparently attributable to:

- Possible procedural delays in assigning and awarding contracts.
- Investigators and FDIC managers not acting in a cooperative manner.
- Limited monitoring of investigations by ODEO.
- Lack of ODEO management attention to reviewing the quality of ROIs prepared by contractors.

BEST PRACTICES AT OTHER AGENCIES

Several of the agencies we visited conducted their investigations internally, while others employed contractors. The Department of Treasury has 20 investigators nationwide and also uses collateral-duty investigators. Treasury completed more than 660 investigations during fiscal year 1996. The Department of Energy uses internal and contract investigators. Energy reported that it takes its contractors about 45 days to complete an investigation. TVA contracts almost all of its investigations using the General Services Administration (GSA) Federal Supply Schedule (FSS). TVA allows its contractors 90 days to complete the investigation. TVA reduces the contractor's fee for any investigations exceeding 90 days.

Likewise, many other federal agencies use contractors to investigate discrimination complaints. According to EEOC's *Federal Sector Report on EEO Complaints Processing and Appeals*, for fiscal year 1996, about 65 percent of the 96 reporting agencies contracted out part or all of their investigations. Contractors investigated about 25 percent of the 13,963 investigations of discrimination complaints conducted by reporting agencies.

Notwithstanding, it appears FDIC may be paying more for its investigations than other agencies. According to the EEOC report, the average cost of an investigation during fiscal year 1996 for the 96 reporting agencies was \$2,035. FDIC paid an average of \$3,262 for its investigations during the same period, 60 percent more than the federal average. However, FDIC's average cost per investigation decreased significantly during fiscal year 1997 to \$2,515 per investigation. The fiscal year 1997 EEOC report had not been issued as of the date of this report.

CONCLUSION AND RECOMMENDATIONS

ODEO needs to take actions to improve the timeliness of investigations and ensure ROIs of consistent quality. ODEO was not issuing ROIs to complainants in compliance with 29 CFR Part 1614. Further, contractors were not completing investigations within contract time frames. Finally, because ODEO was not completing its review of ROIs within contract time frames, ODEO risked having to accept deficient ROIs. Accordingly, we recommended the Director, ODEO, take the following actions:

- (15) Establish performance expectations for EEO Specialists and managers relating to ODEO's award and administration of investigation contracts and monitor contractors more closely to ensure investigations are performed adequately and within contract time frames.
- (16) Consider adding contract language to standard agreements to reduce contractor payments when reporting time frames are exceeded. Explore the specifics of adding such language with ASB and the Legal Division.
- (17) Consider using the FSS for contracting investigations. Determine whether the FSS could provide a lower cost alternative for contracting investigations.
- (18) Establish performance expectations for EEO Specialists and managers relating to ODEO's review of ROIs to ensure that ROIs are assigned for review timely, reviewed within contract time frames, and delivered to complainants within federal sector EEO time frames.

Finally, the OM suggested surveying managers and complainants following the investigation to obtain their opinion of the investigator and overall investigation. We believed such a practice would provide ODEO valuable feedback on the quality of the contractors' work. Accordingly, we recommended the Director, ODEO:

- (19) Consider developing a form for FDIC managers and complainants to evaluate the quality of contract investigator engagements.

Final Agency Decisions

EEO statutes require that agencies issue a FAD within 60 days of an event in the process that prompts such a decision. The 23 cases we could review in the FAD stage had been in that status for an average of 620 days. As a result, complainants' concerns are not being promptly resolved and the confidence in the Corporation's discrimination complaint processing could be negatively affected. We recommended several measures to eliminate the backlog of old cases and to more consistently complete FADs within statutory time frames.

BACKGROUND

12 CFR Part 1614, Section 102, tasks EEO Directors with the responsibility of assuring that individual complaints are fairly and thoroughly investigated and that final decisions are issued in a timely manner. Section 110 requires the agency to issue a final decision within:

- 60 days of receiving notification that a complainant has requested an FAD from the agency,
- 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate FAD where the complainant has not requested either a hearing or a decision, or
- 60 days of receiving the findings and conclusions of an AJ.

In the latter case, the agency may reject or modify the findings and conclusions or relief ordered by the AJ and issue a final decision. However, if the agency does not reject or modify the AJ findings and conclusions within 60 days of receipt, then the AJ findings and conclusions and relief ordered becomes the final decision of the agency and the agency must notify the complainant of the final decision.

The final decision consists of findings by the agency on the merits of each issue in the complaint and, when discrimination is found, appropriate remedies and relief. The final decision also contains information about filing an appeal with EEOC over the final agency decision and information about filing a civil action in federal district court.

ODEO PROCESS FOR PREPARING FADs

ODEO has four EEO Specialists who prepare FADs for discrimination complaints. These EEO Specialists also have other job tasks to perform, as discussed in the Background section of this report. However, these other tasks should not, in our opinion, materially impact the specialists' ability to

prepare FADs timely. ODEO has also employed two law-school interns to assist with processing FADs.

EEO Specialists told us the FAD was the most difficult and time-consuming step of the discrimination complaint process. The process can be basically described as follows:

- Upon determining that a FAD must be prepared, the Associate Director assigns the task to an EEO Specialist.
- The specialist prepares the FAD based upon the findings on the merits of each issue in the complaint and provides a draft to the Associate Director.
- Following approval by the Associate Director, the FAD is submitted to the Director for review and signature.

EEO Specialists estimated that it should normally take an EEO Specialist no longer than 2 weeks to complete an FAD. We determined from the case documentation we reviewed that specialists were taking far longer than those estimated time frames to prepare FADs. In addition, supervisory review of the FADs often took an inordinate amount of time.

STATUS OF CASES IN THE FAD STAGE

We attempted to determine the current status for each of the 29 cases in the FAD stage as of November 7, 1997. We identified five cases incorrectly categorized as FAD cases that were actually at the EEOC or District Court awaiting hearing. Four cases were assigned to EEO Specialists who were in the process of preparing FADs. Six cases were either being reviewed by the Associate Director, EEO and Diversity, or were awaiting signature by the ODEO director or were pending issuance.

Status of Cases at the FAD Stage	FDIC Cases	RTC Cases	Total Cases
Cases Pending Director Signature or Being Reviewed by the Associate Director or Pending Issuance	2	4	6
Cases at the EEO Hearing Stage that are Incorrectly Categorized	3	2	5
FADs in Progress by EEO Specialists	3	1	4
Status Could Not Be Determined	4	10	14
Totals	12	17	29

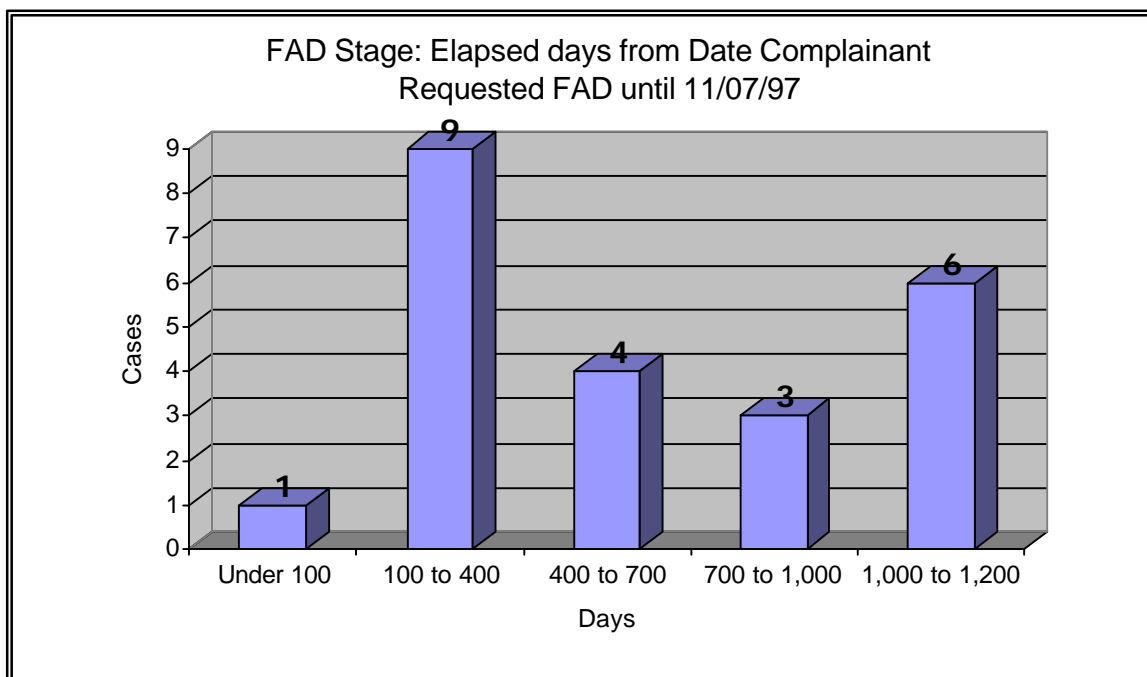
Source: ODEO Database of Open Cases

We could not determine the status for the remaining 14 cases. We researched these cases through ODEO's case management system, file room, and extensive interviews with each of ODEO's EEO Specialists in the Formal Complaint Processing Section. We presented these cases to the Associate Director on three occasions during the course of our review and requested explanations regarding their status. Following the issuance of our draft report, ODEO reported that a FAD had been issued for one of the 14 cases and the remaining 13 had been slated as priority assignments with target completion dates of no later than May 31, 1998.

ASSESSMENT OF PERFORMANCE

Overall Results

FDIC issued 48 FADs during fiscal year 1997. As of November 7, 1997, 14 percent of ODEO's caseload, or 29 cases, were in the FAD stage. We attempted to calculate, for each case, the elapsed time since the complainant requested an agency decision. We were unable to identify complainant request dates for 6 of the 29 cases. The remaining 23 cases had been in the FAD preparation stage for an average of 620 days. More than half of these cases has been in the FAD preparation stage for longer than 400 days.



Source: ODEO database of open cases.

Efforts to Eliminate FAD Cases

In an effort to reduce the number of FADs, ODEO transferred 31 cases to CAS for FAD preparation in March 1996. These cases were assigned to a Senior Attorney who completed FADs for each case by January 1997. We were able to obtain enough information for most of the cases to determine that it took ODEO an average of 157 days to review and issue each FAD and close each case after ODEO received the FAD from CAS. As of November 11, 1997, ODEO had still not issued the FADs for four of the cases completed by CAS.

CAS officials also told us that in August 1996, FDIC's COO instructed the Legal Division's Deputy General Counsel to establish a task force to assist ODEO in issuing FADs and to prepare an inventory of all cases to determine case status and what processing actions were required. CAS developed a 3-member task force and scheduled a start date with ODEO management. However, a few days before the project start date, ODEO management told Legal that ODEO preferred to handle the work internally. Thus, the Legal Division's task force efforts were cancelled.

Finally, in December 1996, ODEO assigned 22 additional cases to three contract firms for FAD preparation. These were the same firms that ODEO used to perform investigations. The firms were instructed to complete the FADs within 15 calendar days. However, it took an average of 158 days from the date FADs were assigned to contractors until ODEO transmitted the FADs to the complainants. As of January 1998, one of the 22 cases was still outstanding.

We asked ODEO why it took so long to review and issue FADs prepared by CAS and contractors. ODEO's Associate Director, EEO and Diversity Branch, told our office the quality of the FADs prepared by CAS and by the three contractors was questionable and ODEO staff had to re-write almost all of the FADs.

FACTORS CONTRIBUTING TO PERFORMANCE

ODEO does not have performance expectations for individual staff and supervisors to impose time frame and due date information for FAD assignments. Moreover, ODEO does not have case monitoring systems that adequately track the assignment of cases to EEO Specialists and monitor the specialists' progress in preparing the FAD. Finally, once specialists prepared draft FADs, ODEO management was not reviewing these documents timely or providing constructive criticism, comments, and other feedback to specialists.

STAFF SUGGESTIONS FOR IMPROVING FAD PREPARATION

We received several suggestions from ODEO and non-ODEO staff about how to improve the FAD process. These suggestions included reducing the amount of case law supporting FADs and developing boilerplate and abbreviated FAD documents for use in particular cases.

In July 1996, a CAS Senior Attorney issued a letter to the Deputy General Counsel outlining the attorney's observations and recommendations for improving complaint processing procedures. Among other things, the Senior Attorney noted that: (1) ODEO EEO Specialists place too much emphasis on case law and the citation of cases when preparing FADs, and (2) FADs do not follow a consistent format. The Senior Attorney recommended limiting the discussion of case law within FADs to the least amount necessary to support FDIC's position. With respect to FAD report consistency, the Senior Attorney recommended ODEO establish boilerplate shell documents for each of the Title VII bases of discrimination to be used as a training tool for new EEO Specialists and to speed up the process for the completion of all FADs. The Senior Attorney has developed boilerplate documents that she uses in processing those discrimination complaints which pose conflicts of interest for ODEO.

Finally, one of the EEO Specialists we interviewed questioned why ODEO issues a full FAD in those instances where the office accepts an AJ decision. Following the receipt of findings and conclusions from an EEOC AJ, the agency may either accept, partially accept, or reject the AJ decision. The agency issues a FAD to the complainant documenting its determination on the AJ findings and conclusions. ODEO prepares a FAD regardless of whether the agency agrees or disagrees with the AJ decision. An EEO Specialist recommended in those cases where the agency is in agreement with the AJ's findings and conclusions, that the agency simply prepare an abbreviated FAD stating ODEO's agreement with the AJ findings and conclusions and then issue the FAD with the findings and conclusions attached as support.

BEST PRACTICES AT OTHER AGENCIES

We also interviewed representatives from several EEO offices at other federal agencies to identify best practices for preparing FADs. The Department of the Air Force EEO Office has a separate headquarters group that prepares FADs for all civilian discrimination cases. The Chief, Air Force Civilian Appellate Review Office (AFCARO), told us that she has established performance goals for each of her FAD writers and she holds her staff to those goals. AFCARO only prepares FADs on the merits of cases¹ and serves as a liaison for the appeals process. FADs on procedural issues are prepared at the individual base level.

The AFCARO has six staff and an administrative assistant. The Chief expects each staff to complete 50 to 60 FADs a year. In 1997, AFCARO issued 313 FADs on the merits of cases. We asked the Chief about the reasonableness of the 60-day time frame allowed by EEO law for completing FADs. The Chief responded that Air Force considers the 60-day time frame a law, and Air Force has never questioned the possibility of exceeding the period. To ensure the 60-day time frame is met, AFCARO places the following performance goals on the FAD process:

- The staff has 20 days to complete the FAD

¹ Agency decisions may either be merit based or procedural in nature. FADs containing determinations based on issues and evidence contained in a report of investigation or in an EEOC administrative judge's findings and conclusions are known as "FADs on the merits". Agency decisions dismissing cases on procedural bases, such as timeliness issues or failure to state a claim, are known as "procedural FADs".

- The Chief, AFCARO, has 25 days to complete her review of the FAD
- The Director, AFCARO, has 10 days to review, approve and sign the FAD
- AFCARO has a 5 day cushion to absorb any delays

The Chief described herself as a taskmaster and stated the FAD process must be production oriented. The Chief develops a work plan for each staff stating the caseload that the staff is expected to complete for the year. If staff members do not meet the work plan requirements, the Chief may issue performance improvement plans or take other actions to improve performance.

The Department of the Treasury also has a separate Office of Equal Opportunity Program in Washington, which includes a Policy and Program Oversight Section and a Complaint Processing Section. The Complaint Processing Section consists of nine staff who provide technical advice on EEO matters to each of the 13 Treasury Bureaus, analyze investigative files prepared by Treasury's four regional processing centers, and prepare all FADs for each bureau. The Acting Director, Office of Equal Opportunity Program, told us she expects each of her FAD writers to complete about 30 FADs a year, or 2.5 a month, to earn a fully successful rating. Treasury issued 351 FADs on the merits of cases during fiscal year 1997.

Three of the EEO Offices that we visited provided example copies of their FAD documents. Generally, these documents looked comparable to FDIC FADs in organization and in content. Further, Treasury has a proforma FAD document that can be used in about 75 percent of its cases.

CONCLUSIONS AND RECOMMENDATIONS

ODEO must take actions to improve the timeliness by which it processes FADs. ODEO was not meeting the statutory time frame requirements and was producing fewer FADs on an annual basis than other agencies that we visited. As a result, complainants' concerns are not being promptly resolved and confidence in the Corporation's discrimination complaint processing is being negatively affected. In our opinion, the Corporation should take prompt action to eliminate the backlog of old cases so that ODEO can then focus appropriate attention on taking the necessary steps to better manage the remainder of its caseload. Accordingly, we recommended that the Chief Operating Officer and Deputy to the Chairman:

- (20) Take one or both of the following actions to promptly eliminate ODEO's backlog of old cases:
 - (a) Direct the Legal Division to reconvene the 1996 Legal Division's task force and charge the task force with completing and issuing all cases in the FAD stage outstanding for more than 180 days.
 - (b) Consider hiring contractors to assist in writing FADs, especially in instances where the contractor performed the investigation and has some familiarity with the issues.

With regard to more efficiently processing FADs, ODEO must more carefully monitor the time being taken to prepare and review FADs. Accordingly, we recommended that the Director, ODEO:

- (21) Establish time frames for preparing and reviewing FAD documents to ensure FADs are completed within 60 days, and monitor staff and supervisors' compliance with these time frames.

Further, we understand that much of the legal analysis and relevant case law is similar between cases involving the same bases. Consequently, ODEO may increase the efficiency by which it processes FADs by using boilerplate FADs for each of the eight discrimination bases. We recommended that the Director, ODEO:

- (22) Develop or obtain pro forma FADs for each of the various discrimination bases and use pro forma documents to facilitate FAD preparation.

Finally, ODEO is currently preparing a full-length written FAD for each AJ determination regardless of whether FDIC agrees or disagrees with the AJ's findings and conclusions. In those instances where ODEO is in agreement with the AJ, ODEO could prepare an abbreviated FAD, reference the AJ determination in the body of the FAD document, and attach a copy of the AJ findings and conclusions to the FAD as support. This approach should enable ODEO to expend less time and resources preparing FADs on AJ findings and conclusions with which ODEO agrees. We recommended the Director, ODEO:

- (23) Establish abbreviated decisions for FADs accepting EEOC AJ findings and conclusions.

Hearings and Appeals

Following the investigation, a complainant may request a formal hearing of a case before an EEOC AJ. The complainant may also appeal agency dismissals and FADs to the EEOC. CAS represents the Corporation in these proceedings. Accordingly, much of the case responsibility shifts from ODEO to CAS during the hearing and appeal stages. In the past, coordination and communication of information between ODEO and CAS could have been better. ODEO historically did not always notify CAS of milestone dates or forward all case file information to CAS. As a result, CAS did not always have sufficient time or the critical information necessary to adequately prepare for hearings or respond to appeals. According to a CAS official, communication has improved between ODEO and CAS over the past year, but more can be done. ODEO has also taken efforts to develop procedures for transmitting correspondence during the hearings and appeals stages. We support ODEO's efforts and recommended the office continue to develop procedures and establish controls to foster coordination and communication with CAS.

BACKGROUND

Hearings

12 CFR Part 1614, Section 109, sets forth legislation for conducting hearings of discrimination complaints. EEOC Management Directive 110 provides implementing guidance to federal agencies. In general, an agency must notify the complainant of his/her right to request, within 30 days of receipt of the investigative file, a hearing on the complaint by an EEOC AJ.

Generally, an AJ will conduct a hearing on the merits of a complaint unless: (1) the parties mutually resolve the complaint and withdraw the hearing request; (2) the hearing request is otherwise voluntarily withdrawn; (3) the complaint is remanded for failure to prosecute; or (4) the AJ determines that some or all material facts are not in genuine dispute and issues an order limiting the scope of the hearing, or if the AJ decides to issue findings and conclusions.

The hearing is an adjudicatory proceeding which completes the investigation of a complaint by ensuring that the parties have a fair and reasonable opportunity to explain and supplement the record and to examine and cross-examine witnesses before an EEOC AJ.

At the conclusion of the hearing, the AJ issues recommended findings and conclusions on the merits for the complaint. The AJ must issue his/her written findings and conclusions within 180 days of the hearing request date.

Appeals

29 CFR Part 1614 Sections 401-407 sets forth legislation governing the federal sector appeals process. After the agency issues its final decision, or if an agency dismisses a complaint, the complainant has 30 calendar days from the date of receipt of the final decision to file a notice of appeal with the EEOC OFO Appellate Review Programs. An OFO attorney reviews the case file de novo, prepares an analysis of the facts in light of applicable statutes, regulations, case law and policy statements and prepares a memorandum decision on the appeal.

The Commission decision becomes final, unless either party requests reconsideration within 30 days of receiving the appeal decision. The Commission's decision on a request for reconsideration is the final step in the federal administrative appellate process. The decision on appeal also may establish remedies, if appropriate. A decision on an appeal is binding on both the agency and the appellant. Aggrieved persons seeking further redress must thereafter file a civil suit in the appropriate federal district court.

ODEO PROCESS FOR HEARINGS AND APPEALS

ODEO has one EEO Specialist who coordinates hearings and appeals with CAS. This EEO Specialist also performs some work in the accept/dismiss stage.

Hearings

The Federal EEO hearings process is conducted by EEOC AJs who are located in EEOC District Offices and the Washington Field Office. Once a complaint enters the hearing stage, CAS assumes responsibility for the case and defends the Corporation before the EEOC. The hearing process is as follows:

- Following transmittal of the ROI and investigative file to the complainant, the complainant has 30 days to either request a final agency decision from ODEO or to request a hearing from EEOC. If the complainant requests a hearing, he/she is required to notify ODEO.
- Upon receiving notification, the EEO Specialist copies the administrative file, ROI and all other case related documentation. The EEO Specialist forwards the case information to EEOC and to CAS.
- EEOC sends a notification letter to ODEO identifying the AJ assigned to the case and a follow-up letter assigning a pre-hearing date and a hearing date.

- The pre-hearing is usually held via conference call with the complainant, complainant's representative, the FDIC attorney, and the AJ. The parties discuss the case and attempt to reach a settlement.
- If the pre-hearing is not successful, the EEO Specialist coordinates the logistics for the hearing. The hearing is usually held at an FDIC office. The specialist arranges for a conference room, sends letters to the parties containing the date and place of the hearing, and coordinates with ASB to hire a court reporter. Following the hearing, the court reporter forwards a transcript of the proceeding to the AJ within 15 days.
- After a hearing is conducted, the AJ issues recommended findings of fact and conclusions of law, either finding discrimination or finding no discrimination, to ODEO. The AJ usually completes his/her written decision within 20 days of receiving the transcript. However, the AJ has 180 days from the hearing request date to deliver a written decision. The AJ normally distributes the written decision to ODEO, the complainant and CAS.
- The EEO Specialist submits the AJ decision to the Associate Director, who assigns the decision to another EEO Specialist for FAD preparation.

Appeals

The EEOC OFO is responsible for adjudicating appeals of administrative decisions issued by agencies on EEO discrimination complaints in the federal sector. The appellate process follows:

- Following the receipt of an agency dismissal or FAD, the complainant has 30 days to file an appeal of the decision with OFO.
- EEOC notifies ODEO that an appeal has been received and that EEOC will request a copy of the case file in 30 days.
- The complainant has 30 days from the filing of the appeal to submit a brief and any other documents in support of the appeal to EEOC and the agency.
- After receiving the appeal and any brief from the complainant, the Director, OFO, will request the complaint file from the agency. The agency has 30 days to submit the file and any agency statement or brief in opposition to the appeal to OFO.
- OFO reviews the record and may require additional information from either party. OFO may remand the case back to the agency for further investigation if extensive supplemental information is needed. In those cases, EEOC designates a time period of 30 to 90 days within which the agency must complete the investigation.
- The agency provides copies of the supplemental investigation to OFO and the complainant. The complainant has 30 days to submit a statement concerning the supplemental record.

- The OFO, on behalf of the EEOC, issues a written decision either dismissing the appeal or finding discrimination and awarding appropriate remedies. This decision is final unless either party files a request for reconsideration.

STATUS OF CASES IN THE HEARING STAGE

As of November 7, 1997, ODEO had 55 cases, or 27 percent of its caseload, in the hearing and appeals stages. Cases in these stages are completely out of ODEO's control. For example, an EEOC AJ placed at least 10 cases that were in the hearing stage on hold for 8 months during 1997 because a key witness associated with each of those cases was out of the country for an extended period of time. These cases remained in ODEO's formal caseload and continued to affect the overall elapsed days statistics that ODEO reported to EEOC even though ODEO had no control over these cases.

EEOC also has had difficulties processing cases timely. According to EEOC's *Federal Sector Report on EEO Complaints Processing and Appeals*, for fiscal year 1996, EEOC had an ending inventory of 8,275 hearings. Further, during fiscal year 1996, it took EEOC an average of 234 days to process a hearing.

Likewise, EEOC's OFO had an inventory of 8,376 appellate cases pending at the end of fiscal year 1996. The average processing time for appellate cases closed during fiscal year 1996 was 323 days.

Currently, ODEO prepares and issues quarterly status reports of discrimination complaint activity to the Operating Committee and to FDIC managers. These status reports present caseload numbers and provide summary information about the numbers of cases in the various stages of the formal complaint process. In our opinion, these status reports could be improved by including average elapsed day information for cases in the various stages of the formal complaint process, as we have done throughout this report. However, because cases in the hearings and appeals stages are outside of ODEO's control, elapsed day information for cases at EEOC would unfairly skew ODEO's efforts to improve overall case processing timeliness. Accordingly, we recommended that ODEO begin reporting case load information containing elapsed day statistics and presenting case information for: (1) all cases, and (2) case information exclusive of cases in the hearings and appeals stages.

ASSESSMENT OF PERFORMANCE

Historically, ODEO has not always communicated information timely or completely to CAS during the hearing and appeal stages. However, it appears that ODEO's performance has improved in this area. Further, ODEO has taken steps to issue procedures to standardize the mailing of correspondence to CAS and EEOC. We support these efforts and suggested ODEO continue to develop procedures and establish controls to ensure that case file information is transferred properly and timely.

CAS officials we interviewed told us that, in the past, ODEO did not always:

- Transfer complete case files to CAS for hearings.

- Send complete investigation files to EEOC.
- Forward updated file information to CAS. After ODEO transfers case files to CAS, ODEO may receive additional correspondence or documentation for the file that is important to the hearing. Historically, ODEO did not always forward this additional file information to CAS.
- Promptly forward EEOC decisions to CAS.
- Notify CAS that complainants had filed appeals with EEOC. In some instances, CAS missed opportunities to file briefs with EEOC opposing the complainant's claims.

One CAS representative we interviewed attributed many of the historical problems to previous ODEO management. He stated ODEO's communication of hearing and appeal information has improved during the past year for the cases with which he has been associated. A second CAS representative told us many of the problems still continued. He stated ODEO still does not communicate information about hearings and appeals to CAS timely. For example, FDIC has 60 days to accept, reject or modify an AJ's findings and conclusions. The CAS representative said he recently received an AJ decision from ODEO after the 60-day time frame had passed.

ODEO has taken steps to improve communication with CAS and EEOC. ODEO staff developed draft procedures for mailing routine correspondence. These procedures include sections for sending correspondence related to the hearings and appeals stages. In February 1998, the new formal complaint manager placed these draft procedures on hold pending review. We support ODEO's efforts to improve communication and encouraged ODEO to finalize these or similar procedures. These actions, together with ODEO's use of the capabilities of the new case management system, should further improve communication of information during the hearings and appeals stages.

FACTORS CONTRIBUTING TO PERFORMANCE

Prior management policies, poor information management systems, and strained relationships between ODEO and CAS contributed to the historical problems in the hearings and appeals stages. It appears that current management has improved communications and relations between ODEO and CAS. Further, ODEO's efforts to organize its file room and the implementation of the new case management system should complement ODEO's efforts to provide timely and complete case file information to CAS in support of hearings and appeals.

CONCLUSIONS AND RECOMMENDATIONS

ODEO's performance in the hearings and appeals stages has improved. In the past, communication of information between ODEO and CAS was lacking. Consequently, CAS did not always have sufficient time or the critical information necessary to adequately prepare for hearings and appeals. A CAS official told us ODEO's performance in this area has improved during the past year. Further, ODEO has taken efforts to develop standard procedures for issuing correspondence during these stages. We

support these efforts and suggested ODEO continue to develop additional procedures and controls over the hearings and appeals stages. Accordingly, we recommended that the Director, ODEO:

- (24) Finalize and issue the draft procedures for managing correspondence during the formal complaint process.
- (25) Develop performance expectations for the EEO Specialist(s) coordinating hearings and appeals based on time frames and quality of work.
- (26) Begin including elapsed day statistics in ODEO quarterly status reports to the Operating Committee and FDIC managers. Present information for (1) all ODEO cases, and (2) cases exclusive of those at the hearings and appeals stages.

Further, we understand that EEOMAS, ODEO's new case tracking system, has the capability to issue form letters and standard reports for the various stages of the formal complaint process. We also understand that EEOMAS can develop status reports showing upcoming milestone dates for cases. We recommended the Director, ODEO:

- (27) Utilize existing capabilities in EEOMAS to help manage correspondence and milestone dates for hearings and appeals activity.

Corporation Comments and OIG Evaluation

On April 21, 1998, the Director, ODEO, provided the Corporation's response to a draft of this report. The response is presented as Appendix II to this report. ODEO management agreed with 25 of the 27 recommendations. The response also discussed efforts that ODEO has already taken to respond to our recommendations. ODEO disagreed with two of our recommendations, but provided adequate information supporting the office's position. Accordingly, ODEO's written response and subsequent discussions provided the requisites for a management decision on all of the recommendations.

With respect to the 14 cases in the FAD stage for which OIG could not determine the case status, ODEO responded that an FAD had been transmitted for one case, and FADs for the remaining 13 cases should be issued by the end of May 1998.

A summary of the Corporation's response to recommendations 1, 3, 19, and 20 and our analysis follows. The Corporation's response to recommendations 2, 4 through 18, and 21 through 27 is not summarized because the actions planned or taken were identical to, or clearly addressed, those we recommended.

Develop office-wide performance measures geared to reducing the formal complaint backlog and improving the average processing time for formal complaints (recommendation 1): ODEO generally agreed with this recommendation and anticipates developing performance measurements related to processing formal complaints by no later than the 3rd Quarter 1998. However, ODEO did not agree to establish measures geared toward reducing the caseload because ODEO believes that the number of cases filed, as well as several stages of the complaint process, are out of ODEO's control. During a meeting with the Director, ODEO, we clarified the intent of this recommendation as being the reduction of existing cases in ODEO's case backlog, especially older cases in the FAD stage. ODEO's response adequately addressed the recommendation and contained all the requisites of a management decision.

Consider discontinuing recording discrimination complaint correspondence information in the ODEO Repository Database and instead only record correspondence information into the EEOMAS case management system (recommendation 3): ODEO disagreed with this recommendation. ODEO stated that EEOMAS is not a correspondence tracking system and explained a need for a system to record correspondence such as Congressional Inquires, and Freedom of Information Act requests. Further, the correspondence system is used in other ODEO program areas. ODEO's explanation of why this recommendation is not appropriate is sufficient for the response to be considered a management decision.

Consider developing a form for FDIC managers and complainants to evaluate the quality of contract investigator engagements (recommendation 19): ODEO disagreed with this recommendation. ODEO opined that it would be unrealistic to expect fair evaluations given the volatile nature of EEO investigations. Instead, ODEO favors the existing avenue of receiving feedback from managers and complainants through the contract Oversight Manager. We acknowledge ODEO's

concerns with soliciting evaluations from FDIC managers. Accordingly, ODEO's response is sufficient to be considered a management decision.

Take one or both of the following actions to promptly eliminate ODEO's backlog of old cases:

(a) Direct the Legal Division to reconvene the 1996 Legal Division's task force and charge the task force with completing and issuing all cases in the FAD stage outstanding for more than 180 days, or (b) Consider hiring contractors to assist in writing FADs, especially in instances where the contractor performed the investigation and has some familiarity with the issues

(recommendation 20): ODEO agreed with part (b) of this recommendation. As mentioned earlier, ODEO engaged the services of a contractor from the FSS in March 1998 to assist in writing FADs for older cases. Accordingly, ODEO's response adequately addressed the recommendation and contained all the requisites of a management decision.

Appendix I: Best Practices Matrix: A Summary of the Information Gathered From Six Federal Agencies.

	Department of the Air Force	Department of Energy	Department of Labor
Counseling Stage	<ul style="list-style-type: none"> • 25% of counselors are full-time (f/t) • 73% of ADR cases result in a settlement. • Performance measures for full-time counselors. 	<ul style="list-style-type: none"> • One f/t counselor in HQ. Remaining counselors are part-time (p/t). • P/t counselors receive 3-day training. • ADR program. • Counselor's reports are completed within 15 days of a formal complaint. 	<ul style="list-style-type: none"> • One f/t counselor in each region plus p/t counselors. • F/t counselors complete counseling, mediation and investigation. • ADR program with in-house mediators.
Accept/ Dismiss (A/D) Decision Stage	<ul style="list-style-type: none"> • A/D decision is completed with cooperation from the Judge Advocate General. • Decision is completed in 30 days. • No reluctance to dismiss complaints. • Air Force loses 50% of appeals of dismissals. Reasonable loss rate would be 20%. 	<ul style="list-style-type: none"> • 75% of field units complete their own decision. 1-2 people in HQ complete the remaining field and HQ decisions. • Main issues are timeliness and stating a claim. • Decision is completed approx. 3 days after all the information is received. • No reluctance to dismiss complaints. 	<ul style="list-style-type: none"> • One employee, an attorney, in HQ completes all decisions. • Decision is completed in 30 days. • It is important to have qualified staff. • No reluctance to dismiss complaints.
Investigation Stage	<ul style="list-style-type: none"> • Investigation completed in-house. • Investigation completed in 120 days. • Resolution is attempted after ROI is issued. 	<ul style="list-style-type: none"> • Investigation completed in-house or contracted. • Planning to contract 100 percent in the future. • Contracted investigation is completed in 45 days. 	<ul style="list-style-type: none"> • Investigation is completed in-house. • Investigation completed in 100 days. • ROI reviewed in 30 days.
Final Agency Decision Stage	<ul style="list-style-type: none"> • 7 person staff. • Each employee completes approx. 50 FADs a year. • FAD for an AJ's decision is one page plus boilerplate. • FAD completed in 60 days. 	<ul style="list-style-type: none"> • One employee in HQ completes all FADs. The same person writes A/D decisions. • FAD for an AJ's decision is basically cover letter, boilerplate and decision. 	<ul style="list-style-type: none"> • One employee, an attorney, in HQ completes all FAD. • General Counsel's Office reviews FAD prior to their issuance. • FAD completed in 60 days. • Employee completes approx. 35 FADs a year. • Emphasized the importance of quality staff.

BEST PRACTICES MATRIX (Continued)

	Tennessee Valley Authority	Department of the Treasury	U. S. Customs Service
Counseling Stage	<ul style="list-style-type: none"> • 40 p/t counselors report to 1 f/t counselor. • Counselor's report is given to the complainant with the Notice of the Right to File (NTRF). • After issuing NTRF a different counselor will contact the complainant to attempt a resolution. • Counselors must be thoroughly trained. 	<ul style="list-style-type: none"> • Counseling completed at Bureau level. (See Customs Service). 	<ul style="list-style-type: none"> • Field EEO Managers manage and train p/t counselors. • Counselor's goal is to encourage a settlement. • Passing some of the cost down to offending divisions. • Harassment task force • EEO Liaisons in two largest divisions.
Accept/ Dismiss (A/D) Decision Stage	<ul style="list-style-type: none"> • One employee, an attorney, in HQ completes all decisions. • Decision is completed in 5-10 days. • Main issues are timeliness and stating a claim. • Performance measures (days to complete, percentage of cases lost on appeal) are used. • Quality of EEO staff is critical. • No reluctance to dismiss complaints. 	<ul style="list-style-type: none"> • Decisions are completed at one of four Regional Processing Centers (RPC). • Decision is completed in 45-60 days. The goal is 30 days. • Standardized letters are used for 75% of the cases. • No reluctance to dismiss complaints. 	<ul style="list-style-type: none"> • Completed by RPC.
Investigation Stage	<ul style="list-style-type: none"> • 99% of investigations are contracted. • ROI is completed in 90 days. • If longer than 90 days, the contractor's fee is reduced. • Use court reporter for affidavits. 	<ul style="list-style-type: none"> • Completed in-house. • The RPC is responsible for managing the investigation. • 50% of the ROI are issued within 180 days. • 20% of the cases are resolved after the ROI is issued. 	<ul style="list-style-type: none"> • Completed by the RPC.

	Tennessee Valley Authority	Department of the Treasury	U. S. Customs Service
Final Agency Decision Stage	<ul style="list-style-type: none"> • One employee, an attorney, in HQ writes FAD. Contractors are used if workload demands require it. • In-house decisions are completed in 14 days. • AJ's decisions are not abbreviated. • It took a lot of effort to get a high quality staff. • Manager believes in process improvement, quality improvement and constant improvement. 	<ul style="list-style-type: none"> • All FADs completed at HQ by a staff of 7. • 75% of FADs are standard. • FAD can be done in 2-3 days if the writer is not disturbed. • Each employee completes approx. 30 FADs a year. • It is important employees have the right skill sets. 	<ul style="list-style-type: none"> • Completed by the HQ Complaint Processing Section.

Appendix II: Corporation Comments

Appendix III: Management Responses to Recommendations

This table presents the management responses that have been made on recommendations in our report and the status of management decisions. The information for management decisions is based on management's written response to our report from the Director, ODEO.

Rec. Number	Corrective Action: Taken or Planned / Status	Expected Completion Date	Documentation that will confirm final action	Monetary Benefits	Management Decision: Yes or No
1	ODEO will finalize written performance measures related to processing formal complaints.	9/30/97	Performance measures	\$0	Yes
2	ODEO has already transferred informal case information into EEOMAS. ODEO will continue to maintain informal case information on EEOMAS.	Completed	EEOMAS activity reports	\$0	Yes
3	ODEO disagreed with this recommendation.	N/A	N/A	\$0	Yes
4	ODEO is holding work group meetings with ODEO staff to discuss procedures and controls for entering future information into EEOMAS. ODEO will also develop draft procedures.	6/30/98	Final procedures	\$0	Yes
5	ODEO scheduled video teleconference meeting with field staff to discuss this recommendation. ODEO will also issue documented guidance.	6/30/98	Documented guidance	\$0	Yes

Rec. Number	Corrective Action: Taken or Planned / Status	Expected Completion Date	Documentation that will confirm final action	Monetary Benefits	Management Decision: Yes or No
6	ODEO scheduled video teleconference meeting with field staff to discuss this recommendation. ODEO will also issue documented guidance.	6/30/98	Documented guidance	\$0	Yes
7	ODEO will conduct a review of this information to determine whether ODEO's dormant EEO Action Officer Program can be used to address this recommendation.	9/30/98	Results of review	\$0	Yes
8	ODEO will explore the development of a plan to secure input from managers and directors for facilitating early resolution of informal complaints and provide standardized guidance to EO Specialists regarding information to be shared with FDIC managers.	9/30/98	Standardized guidance	\$0	Yes
9	ODEO will consider modifying the course outline for its Corporate-wide <i>EEO training for Managers and Supervisors</i> to include a stronger focus on what managers can expect if they become involved in a discrimination complaint and what they can do to resolve complaints.	9/30/98	Revised course outline	\$0	Yes
10	ODEO instituted an unwritten policy in March 1998 requiring that counselor reports be completed and submitted during the informal phase. ODEO will memorialize and distribute this policy.	6/30/98	New policy	\$0	Yes

Rec. Number	Corrective Action: Taken or Planned / Status	Expected Completion Date	Documentation that will confirm final action	Monetary Benefits	Management Decision: Yes or No
11	ODEO will develop a standardized review of criteria and/or a checklist to insure counselor reports include the elements necessary to frame the bases and issues of the complaint.	6/30/98	Standard criteria and/or checklist	\$0	Yes
12	ODEO will develop performance expectations for managers and specialists completing accept/dismiss decisions based on time frames and quality of work.	9/30/98	Performance expectations	\$0	Yes
13	ODEO will explore securing specific training tailored to accept/dismiss decisions for specialists.	12/31/98	Training program	\$0	Yes
14	ODEO is currently exploring using EEOMAS to generate a boilerplate letter for making accept/dismiss decisions.	6/30/98	Boilerplate letter	\$0	Yes
15	ODEO will develop performance measures for managers and specialists involved in the award and administration of investigation contracts.	9/30/98	Performance measures	\$0	Yes
16	ODEO will meet with ASB and the Legal Division to explore the feasibility and need for language to reduce contractor payments when reporting time frames are exceeded.	9/30/98	Determination from meetings with ASB and the Legal Division	\$0	Yes

Rec. Number	Corrective Action: Taken or Planned / Status	Expected Completion Date	Documentation that will confirm final action	Monetary Benefits	Management Decision: Yes or No
17	ODEO is currently using the FSS in the FAD stage of the EEO process. ODEO will explore the feasibility of using the FSS to reduce costs associated with contracting for investigations.	2/98	Determination on use of FSS for investigation contracts.	\$0	Yes
18	ODEO will develop performance measures for managers and specialists related to the review and delivery of ROIs.	9/30/98	Performance measures	\$0	Yes
19	ODEO disagreed with this recommendation.	N/A	N/A	\$0	Yes
20	ODEO contracted with a firm from the FSS to assist in writing FADs for older cases.	3/98	FSS contract	\$0	Yes
21	ODEO will develop performance expectations for managers and specialists involved in the preparation and review of FADs.	9/30/98	Performance expectations	\$0	Yes
22	ODEO will explore the feasibility of developing or obtaining pro forma FADs to facilitate FAD preparation	12/31/98	Determination of feasibility	\$0	Yes
23	ODEO will explore the feasibility of establishing abbreviated decision for FADs accepting AJ findings and conclusions.	9/30/98	Determination of feasibility	\$0	Yes
24	ODEO will develop draft standard operating procedures for correspondence management.	9/30/98	Final procedures	\$0	Yes

Rec. Number	Corrective Action: Taken or Planned / Status	Expected Completion Date	Documentation that will confirm final action	Monetary Benefits	Management Decision: Yes or No
25	ODEO will develop performance expectations for EEO Specialists coordinating hearings and appeals.	9/30/98	Performance expectations	\$0	Yes
26	ODEO will consider including elapsed day statistics in quarterly status reports to the Operating Committee and FDIC managers.	9/30/98	Revised status reports	\$0	Yes
27	ODEO anticipates utilizing EEOMAS to monitor key correspondence and milestone dates for hearings and appeals.	6/30/97	EEOMAS activity reports	\$0	Yes